Nos. 701, 702, 703 and 744.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

IN THE MATTER OF ARTHUR H. NOYES.

IN THE MATTER OF THOMAS J. GEARY.

IN THE MATTER OF JOSEPH K. WOOD.

IN THE MATTER OF C. A. S. FROST.

VOL. I.

(Pages 1 to 256, inclusive.)

TRANSCRIPT OF PROCEEDINGS AND TESTIMONY.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of
ARTHUR H. NOYES.

Affidavit of Erik O. Lindblom.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

Erik O. Lindblom, being duly sworn, deposes and says:

That the following facts appear of record among the papers, records, and files of this Honorable Court in the cases hereinafter referred to, including the contempt proceedings heretofore had therein.

That at all the times hereinafter mentioned Arthur H. Noyes was, and now is, the duly appointed and acting Judge of the District Court of the United States for the Second Division of the District of Alaska.

That on the 23d day of July, 1900, said Arthur H. Noyes signed an order in the action entitled Chipps vs. Lindeberg et al., the complaint in which was thereafter filed in the office of the Clerk of said Court on the said 23d day of July, 1900, by which order Alexander McKenzie was appointed receiver of the property described in said complaint, which said property consisted principally of a placer mining claim, which the defendants in

said action were actually working at the date of the appointment of said receiver. That in and by the order appointing him receiver said McKenzie was directed to take possession of said mining claim and to work the same, and the defendants were thereby enjoined from interfering with the possession of said receiver. That similar orders were made on said 23d day of July, 1900, under similar circumstances, in four other cases, entitled as follows, namely: Rogers vs. Kjellman, Melsing et al. vs. Tornanses; Comptois vs. Anderson, and Webster vs. Nakkela et al., and immediately after said orders had been made said McKenzie dispossessed defendants respectively of the placer claims described in the complaints in said actions, and taking possession of said mines, worked the same, extracting gold-dust therefrom of the value of more than one hundred thousand dollars ($100,000.) That after said orders were made the defendants in each of the cases presented to said Arthur H. Noyes, Judge of said Court, and to the said Court, a petition for the allowance of an appeal from said order, together with an undertaking on appeal and an assignment of errors; but the said Arthur H. Noyes refused to grant said petition or to allow an appeal from any of said orders.

That thereafter, on the 29th day of August, 1900, the Honorable W. W. Morrow, one of the Judges of this Court, made orders allowing appeals in the said cases, and directing that writs of supersedeas should issue therein out of this Court, directed to the said Alexander McKenzie and the said Arthur H. Noyes, commanding said Noyes to desist from any further proceedings on

account of said orders and commanding said McKenzie to restore to the defendants in said actions all property which the said McKenzie had taken or received as receiver.

That on the 14th day of September, 1900, certified copies of said order allowing said appeal in some of said cases, with other papers, and the said writs of supersedeas in all of said cases, were filed in the office of the clerk of the said District Court, and a certified copy of said writ of supersedeas was served upon the said Arthur H. Noyes, and also upon the said Alexander McKenzie in the cases hereinbefore mentioned, and at the same time demand was made upon said Alexander McKenzie that he return to the defendants in said actions the gold and gold-dust which he had taken from the claims described in the complaints in said actions, which said gold-dust so taken by said McKenzie from said claims and then in his possession was of the value of about two hundred thousand dollars. That said McKenzie refused to deliver said gold-dust, or any part thereof, to the defendants in said actions, or either of them, and refused to comply with said writ of supersedeas; whereupon application was made by the defendants, through their counsel, to the said Arthur H. Noyes for an order directing the enforcement of the writ of supersedeas issued by this Court. That said Arthur H. Noyes then and there declined to make said order, saying that the matter was out of his hands. That on the 15th day of September, 1900, the defendants in said actions, through their counsel, again requested said Arthur H. Noyes to make an order directing the enforce-

ment of said writ of supersedeas, but the said Noyes then and there stated and declared that the order appointing the receiver was not appealable, and that the defendants were not entitled to an appeal.

That on said 15th day of September, 1900, the said Arthur H. Noyes gave instructions to one C. L. Vawter, who was then United States marshal for said District, to place a guard over the vaults containing said gold-dust which had been so taken by said McKenzie from said mines described in the complaints in said actions, and to prevent access thereto by any person. That the object of said order, as complainant is informed and believes, was to defeat the execution of said writ of supersedeas.

That in and by an affidavit made by said McKenzie in contempt proceedings growing out of said cases, it appears that the said Arthur H. Noyes ordered and directed the United States marshal for the District of Alaska to take possession of the portion of said vaults containing the gold and gold-dust held by said McKenzie as receiver, place a guard over it, and not to permit said McKenzie access to said vaults.

That in and by an affidavit made by said Vawter, in the said contempt proceedings, it further appears that on the 15th day of September, 1900, he was ordered by said Arthur H. Noyes to go to the safe deposit building, and to place a guard over the vaults used by McKenzie and not to allow any one, especially McKenzie and the parties interested, to have access to the boxes in which the gold and gold-dust so held by said McKenzie was so

contained until the further order of said District Court. The records herein further show that on the 15th day of September, 1900, said Arthur H. Noyes, in the presence of T. J. Geary, stated to said C. L. Vawter, marshal as aforesaid, to "go ahead and keep possession of the gold-dust, and do not let McKenzie or any of the parties go near it." That at the same time said Arthur H. Noyes said, in the presence of said Geary, that he, said Noyes, did not think the order appointing McKenzie receiver was an appealable order, but that assuming it was, that the only supersedeas that could be effective was the one staying proceedings, and that on the record as it was, there was no justification for defendants demanding the return of the property and that the property (meaning the gold-dust hereinbefore referred to) should be held to meet the final judgment of said District Court.

That on the 16th day of September, 1900, said Arthur H. Noyes stated to T. J. Geary that the only order which he, said Arthur H. Noyes, could make in said cases was one staying proceedings "leaving that property" (referring to the gold-dust aforesaid) "where it was."

That on the same day, to wit, Sunday, the 16th day of September, 1900, said Arthur H. Noyes stated to Geary, as attorney for said McKenzie, that said McKenzie "should turn over the mines and surrender them" (referring to the mines described in the complaints in said actions), "but should retain the gold-dust" (referring to the gold-dust hereinbefore mentioned).

That on the 6th day of October, 1900, in the said case of Robert Chipps vs. Lindeberg et al., the plaintiff, by

his attorneys, Hubbard, Beeman & Hume, made and filed a motion in the District Court of the District of Alaska, Second Division, for an order of said Court restraining the defendants in said cause, their agents and employees, from working the placer mining claim known as "Discovery Claim on Anvil Creek," Cape Nome Mining District, District of Alaska, and also restraining the defendants from taking out of the jurisdiction of said Court any gold taken from said claim; which motion was based upon an affidavit filed therewith, of Robert Chipps, in which it was stated, among other things, that he was the plaintiff in said action; that on or about the 15th day of September, A. D. 1900, the defendants therein took forcible possession of said "Discovery Claim on Anvil Creek" under an alleged writ of supersedeas from the Circuit Court of Appeals for the Ninth Circuit, and had since that date been working said claim and extracting gold and gold-dust therefrom. That thereupon, on said 6th day of October, 1900, said Arthur H. Noyes, as Judge of said Court, made an order in said cause in the words and figures following:

"Upon reading the motion of the plaintiff for an injunction, and the affidavit thereto attached, and the complaint in the above-entitled cause,

"It is ordered that the defendants herein show cause before me, at my chambers in the Court Building, Stedman avenue, Nome, Alaska, on Monday, the 8th day of October, A. D. 1900, at the hour of 9:30 o'clock A. M., why an injunction should not issue restraining you from the further working of the Discovery Placer Mining

Claim, Cape Nome Mining District, District of Alaska, and restraining you from deporting from the jurisdiction of this Court any gold-dust or gold taken out of the said Discovery Placer Mining Claim on Anvil Creek, Cape Nome Mining District, District of Alaska.

ARTHUR H. NOYES,
Judge of the United States District Court, District of Alaska, Division Two.

Dated at Nome, Alaska, this the 6th day of October, 1900. In Chambers."

That thereafter, and on the 10th day of October, A. D. 1900, said Noyes made an order and decision upon said application for an injunction and restraining order in the said entitled cause in the words and figures following, to wit:

"Upon reading the motion of plaintiff for an injunction, order, and the affidavit thereto attached, the complaint, and all papers filed in the above-entitled cause,

It is now ordered that you, Jafet Lindeberg, Erik O. Lindblom, and John Brynteson, and each and every one of you, your agents, servants, and employees and attorneys, and everyone working under the direction of you, your agents, servants, employees and attorneys, be and hereby are enjoined from moving, assisting in moving, causing to be moved, or allowing to be moved, any gold or gold-dust taken out of the said placer mining claim known as 'Discovery Claim on Anvil Creek,' Cape Nome Mining District, District of Alaska, U. S. A., to any place

away from and outside of the Nome Precinct, District of Alaska, U. S. A., and from your possession.

ARTHUR H. NOYES,

Judge of the said District Court of the District of Alaska, Second Division.

Dated October 10th, A. D. 1900. In Chambers."

Complainant charges that the conduct of said Arthur H. Noyes, after the appointment of said receiver and herein described, was for the purpose of interfering with and preventing the enforcement of said writ of supersedeas and rendering the same nugatory and ineffectual.

ERIK O. LINDBLOM.

Subscribed and sworn to before me this 10th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,

Clerk United States Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed]: No. 701. United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of Arthur H. Noyes. Affidavit of Erik O. Lindblom. Filed May 13, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city and county of San Francisco, State of California, on the 18th day of May, in the year of our Lord one thousand nine hundred and one. Present: Hon. WILLIAM B. GILBERT, Circuit Judge; Hon. ERSKINE M. ROSS, Circuit Judge; Hon. THOMAS P. HAWLEY, District Judge.

In the Matter of
ARTHUR H. NOYES,
Contempt. } No. 701.

Order to Show Cause.

Whereas, it has been made to appear to this Court by the affidavit of Erik O. Lindblom, on file herein, that Arthur H. Noyes, Judge of the District Court of the United States for the Second Division of the District of Alaska, did, at Nome, Alaska, on or about the 15th day of September, 1900, and also at various times thereafter during said month of September, and the following month of October, act contrary to, and in violation of, the writs of supersedeas and the orders of this Court contained in said writs, which were issued out of this Court on or about the 28th day of August, 1900, in those certain causes herein pending entitled and numbered as follows, to wit: Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose Comptois, Appellee, No. 632; John

I. Tornanses, Appellant, vs. L. F. Melsing et al., Appellees, No. 634; William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636, which said writs were directed to the said Arthur H. Noyes, and were personally served upon him on the 14th day of September, 1900:

Now, therefore, on motion of Messrs. E. S. Pillsbury and F. D. Madison, attorneys of this Court, it is ordered that the said Arthur H. Noyes personally appear before this Court, in its courtroom in the city and county of San Francisco, State of California, on Monday, the 14th day of October, 1901, at eleven o'clock in the forenoon of the said day, then and there to show cause, if any he has, why he should not stand committed for contempt of this Court.

And it is further ordered that a certified copy of this order together with a certified copy of the said affidavit of Erik O. Lindblom, be served upon the said Arthur H. Noyes as soon as may be.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true and correct copy of an order to show cause entered in the Matter of Arthur H. Noyes, No. 701, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals at San Francisco, California, this 25th day of May, A. D. 1901.

[Seal] FRANK D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

UNITED STATES MARSHAL'S RETURN.

I hereby return, that I personally served the original writ, of which the within is a certified copy, on the 5th day of July, 1901, on Arthur H. Noyes, by delivering to and leaving with Arthur H. Noyes, said defendant named therein, at Nome, Alaska, in the 9th Circuit, a certified copy thereof, together with a certified copy of the affidavit of Erik A. Lindblom therein mentioned.

San Francisco, Cal., July 29th, 1901.

JOHN H. SHINE,

United States Marshal for the United States Circuit Court of Appeals for the Ninth Circuit.

By William P. Gamble,

Office Deputy.

[Endorsed]: No. 701. United States Circuit Court of Appeals, Ninth Circuit. In the Matter of Arthur H. Noyes. Certified Copy Order to Show Cause, with Return of United States Marshal. Filed July 29, 1901. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of
ARTHUR H. NOYES, } No. 701.

Answer of Respondent Arthur H. Noyes.

The respondent, Arthur H. Noyes, reserving all objections and exceptions to the form and sufficiency of the affidavit of Erik O. Lindblom, upon which the order to show cause herein is based, as well as to the form and sufficiency of the order, showing cause, in obedience to said order, avers as follows:

That as to all matters and things in any way appearing of record in the causes of action described or referred to in the affidavit of Erik O. Lindblom, he respectfully refers to the records therein.

That concerning the averments of the said affidavit in relation to what appears of record in any other causes, than the causes of action in which the appeals were allowed by this Honorable Court, respondent has no knowledge or information other than as contained in said affidavit.

The respondent admits that he did appoint a receiver in the causes mentioned; that the appointment was made by order; that application, in the causes mentioned, for the appointment of a receiver, was made to him at the time stated in the affidavit, in the cause of Chipps vs.

Lindeberg et al., on a duly verified complaint and bill in equity and the affidavit of the plaintiff, and, in the other causes of action mentioned, on the papers and files in the causes, all of which will appear by reference to the records and files in said causes.

In regard to the filing of the several papers in said causes, respondent has no independent recollection, but believes that all papers were filed on the dates stated in the endorsements of filing on said papers.

Respondent admits that he refused to allow appeals from the order appointing a receiver in the causes mentioned; but he avers that in all his acts and doings in the premises, that he acted judicially, in the exercise of his best judgment and discretion, and not otherwise.

Respondent admits and avers that the writ of supersedeas issued by this Honorable Court, mentioned and described in the affidavit of Lindblom, was served upon him on the fourteenth day of September, 1900, while he was confined to his room by sickness; that no application was made to him for any order related thereto or connected therewith until September fifteenth, 1900; that, on said day, and while respondent was still confined to his room by sickness, he was visited by Mr. Knight, counsel for the defendants in certain of said causes; that it is respondent's recollection that Mr. Knight requested an order requiring the receiver to deliver to the defendants the possession of the gold and gold-dust which had been extracted from the mines, the subjects of the actions, and then deposited in the safety deposit vaults of the Alaska Banking and Safe Deposit Company. And respondent avers that at that time he refused to make the order re-

quested; and respondent avers that at said time he stated to Mr. Knight that he did not believe that he could or should make such an order, that all matters pertaining to the receivership had passed beyond his control, except such orders as he was required to make by the terms of the writ, and that he would enter such orders as soon as possible, and it is respondent's best recollection, that at said time he told Mr. Knight that he did not believe he had the power to make such an order as Mr. Knight required.

It is respondent's recollection that within a few days from that time, Mr. Metson, counsel for certain of the defendants in said causes, appeared in the court over which respondent was presiding, then engaged in the trial of a criminal cause before a jury; that several other attorneys, engaged in different causes, not connected with the causes described in the Lindblom affidavit, were, and had been, making applications to be heard upon various matters and were interrupting and disturbing the cause then on trial; that the district attorney, who was prosecuting in the cause, objected to the interruptions being made; and that respondent stated to counsel that they could not be heard at that time. It is respondent's best recollection that he was not then informed concerning the nature of the motions to be made by Mr. Metson or whether it had relation to any of the causes described in the Lindblom affidavit; and if, in fact, Mr. Metson intended to move in any of the causes at that time, that, together with the request of Mr. Knight hereinbefore set forth, constitutes the only applications or attempted applications made to this respondent for any order upon the receiver directing him

to deliver the possession of the gold and gold-dust to the defendants.

Respondent denies that either to the said Knight or to the said Metson, or to any person, either in words or substance, he denied the right of this Honorable Court to allow an appeal or appeals in the causes described in the Lindblom affidavit, and denies that he ever, either to the said Knight or to the said Metson, or to any other person, did state as a ground for refusal of the order requiring the receiver to deliver the possession of the gold and gold-dust to the defendants, that the order appointing the receiver was not appealable or that defendants were not entitled to an appeal; respondent avers, however, that it was his judgment and opinion that the order or orders appointing the receiver were not appealable, and it was his opinion and judgment that this Court, upon hearing the appeals in the causes, would so determine.

It is the best recollection of respondent that at the time when the application for an order was sought to be made by Mr. Metson, as aforesaid, nothing was said other than as substantially hereinbefore set forth.

Respondent states that it may be true that in a general conversation with Mr. Knight he might have expressed the opinion (for, at that time, he fully entertained it) that the receivership orders were not appealable, and that this Honorable Court would so determine. As to whether he did so express such opinion on the occasion referred to, he does not remember; but. he avers, that if such remarks were made, they were not made, and, were not, and could not be understood as being, the ground of refusal of the order sought, for, at that time, the appeal,

in some of the cases at least, had already been allowed by this Honorable Court.

That on the said fourteenth day of September, 1900, as hereinbefore stated, a writ of supersedeas had been served upon respondent; which, as respondent then believed, and as he still believes, ousted this respondent and the Court over which he presided from making any order or orders in the premises concerning the receivership proceedings, save such only as were required by the terms of the writ, which this respondent made and entered with all convenient speed, in obedience to and in aid of the said writ and of the jurisdiction of this Honorable Court.

Respondent avers that as he now remembers, that at some time prior to the fourteenth day of September, 1900, a stipulation or agreement had been entered into between the parties interested in the preservation of the gold-dust in the safe deposit vaults of the Alaska Banking and Safe Deposit Company, and a request made that a military guard be placed over the same, the amount of money being large and, as was represented and believed, the vaults not sufficiently secure; that such military guard was the only guard placed over the gold-dust so deposited, unless pursuant to two certain letters, bearing date the fifteenth day of September, respectively, 1900, one addressed to Marshal C. L. Vawter, and the other addressed to Major Van Orsdale, in command of the military forces at Nome, which letters were handed to the parties to whom they were addressed, respectively, on that day.

Respondent further avers that at some time prior to the fourteenth day of September, an order had been made and filed in this cause, or a general order of the

court had been made, that no gold-dust should be withdrawn from the safety deposit vaults in any case without an order of Court and after notice to both parties and opportunity to both parties to be heard.

Respondent further avers that on the fifteenth day of September, 1900, it was represented to respondent, and he verily believed, that a large concourse of people had assembled in and around the bank building of the Alaska Banking and Safe Deposit Company, that they were armed and threatening violence, that the danger was menacing, that threats had been made to break into the bank building; and, under the conditions and circumstances then existing this respondent dictated, signed, and caused to be delivered the letters hereinbefore mentioned.

Respondent, in that behalf, further avers that he does not believe that said Marshal Vawter understood or believed, and, indeed, he could not understand or believe, that said letter was meant or intended in any way or manner to vex or harass or disturb the jurisdiction of this Honorable Court or to prevent or hinder or delay the execution of its process, or to prevent or hinder the said receiver, McKenzie, from delivering the gold and gold-dust contained in said vaults.

This respondent never in any manner, at any time or place, directly or indirectly, authorized or required the United States marshal to take possession of the portion of the vaults containing the gold-dust and gold placed there by McKenzie as receiver, or to place a guard over it or to prevent said McKenzie access to said vaults, other than hereinbefore stated; and he denies that he ever at any time ordered the said Vawter to go to the safe deposit

building and to place a guard over the vaults used by McKenzie, and not to allow anyone, especially McKenzie, or the parties interested, to have access to the boxes in which the gold and gold-dust so held by McKenzie was contained, until the further order of said District Court, other than as hereinbefore stated.

Respondent denies that on the fifteenth day of September, 1900, in the presence of T. J. Geary, or in the presence of any other person, or at all, he stated to the said C. L. Vawter to go ahead and keep possession of the gold-dust, and not let McKenzie or any of the parties go near it, or that he ever used any words of similar import or meaning.

Respondent denies that on the fifteenth day of September, 1900, or at any time, he said in the presence of T. J. Geary, or of any person, that he, respondent, did not think the order appointing McKenzie was an appealable order, but, assuming that it was, the only supersedeas that could be effective was the one staying proceedings, and that, on the record as it was, there was no justification for defendants demanding the return of the gold and gold-dust hereinbefore referred to, and that the gold and gold-dust should be held to meet the final judgment of said District Court.

Respondent avers, however, that on the fifteenth day of September, 1900, as hereinbefore stated, he was of the opinion that the order appointing McKenzie receiver was not an appealable order, and was also of the opinion that this Honorable Court would so hold on the final hearing of the appeal; and he states that he may have, in the

hearing of said Geary or in a conversation with said Geary or some other persons, so stated.

Respondent denies that on the sixteenth day of September, 1900, he stated to T. J. Geary that the only order which he could make in said causes was one staying proceedings, leaving that property, referring to the gold-dust, where it was. Respondent avers, in that behalf, that on said day it was his opinion that the only order which he could make in said causes, concerning the said receiver and receivership proceedings, was the order or the orders required by the writ of supersedeas and in full obedience thereto and in compliance therewith. Respondent further avers that he did not think it devolved upon him to interpret the writ of supersedeas so far as it pertained to the duties of, or directions to, the receiver, Alexander McKenzie; that the writ of supersedeas required respondent to stay all proceedings in the receivership matter and to desist and refrain from any further acts in connection therewith, and that respondent, in so doing, was complying fully with the requirements of this Honorable Court; and respondent never at any time believed that it was proper for him to make an order requiring McKenzie to deliver the possession of the property or any part or portion thereof. It is possible that in a private conversation with the said T. J. Geary, this respondent may have stated that he believed the only order or orders he could make were the ones required by the writ of supersedeas staying proceedings.

Respondent denies that on the sixteenth day of September, 1900, or at any time, he stated to said Geary, either as attorney for the receiver or at all, that McKenzie

should retain the gold-dust, or any words of similar import or meaning.

Respondent admits that on the sixth day of October, 1900, application was made to the Court presided over by him for an order restraining the defendants in the action of Chipps vs. Lindeberg, from working and mining the claim described in the pleadings in said cause and restraining the defendants from taking out of the jurisdiction of that Court any gold taken from said claim; that he made an order therein as set forth in the affidavit of Lindblom; and admits that on the tenth day of October, 1900, and upon the hearing of such application in the Court presided over by this respondent, the order set forth in the said affidavit, restraining the defendants from moving or allowing to be moved any gold or gold-dust taken out of the said mining claim to any place away from and outside of the Nome Precinct, District of Alaska, or from the possession of the defendants, was made. Respondent avers that at the time of the granting of said orders the only appeal taken or allowed was an appeal from the order appointing the receiver and restraining the defendants from working said claim; that he conceived and believed, as to all matters embraced in the said appeal, he had no power to make any orders, save only the orders so made and entered by him staying proceedings; but it was his full conviction that as to matters embraced in the last order named, to wit, to prevent the gold-dust from being removed entirely beyond the jurisdiction, it was his duty, upon proper application, and a full showing, to restrain the defendants from removing the gold-dust from beyond the jurisdiction.

Respondent further avers that ever after the reception of the order and writ of supersedeas from this Honorable Court, he believed that he had no power to make orders enjoining the defendants from working and mining the claim, the subject of the action, or extracting the gold-dust therefrom, but he did believe that upon proper application being made, and without successful defense thereto, and where the danger was apparent, that it did lie in the power of the Court to enjoin and restrain the defendants in the cause in question from deporting or carrying away beyond the district and beyond the jurisdiction the gold-dust extracted from the mines in question, before the trial and determination of the action.

Respondent further avers that in each and every of the matters pretended to be set forth and described in the affidavit of the said Lindblom, he acted in good faith and with what he considered to be due regard to the rights of the parties and in full and complete respect for the authority, orders, and writs of this Honorable Court.

Respondent denies that either by his conduct or by any act or omission on his part he sought to interfere with or did interfere with or prevent the enforcement of the said writ of supersedeas, or sought to or did render the same nugatory or ineffectual; but that, on the contrary, every act performed by him after the appointment of the receiver was performed in the exercise of his best judgment and judicial discretion and with due respect to this Honorable Court.

Wherefore, the respondent prays that he be examined personally in the presence and hearing of this Honorable Court, touching the matters and things charged against

him, and that he be adjudged not guilty of the offenses charged.

ARTHUR H. NOYES,
Respondent.

P. J. McLAUGHLIN,
Counsel for Respondent.

United States of America,
State and Northern District of California. } ss.

Arthur H. Noyes, being first duly sworn, on his oath says that he is the respondent in this proceeding; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

ARTHUR H. NOYES.

Subscribed and sworn to before me this 17 day of October, 1901.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 701. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Arthur H. Noyes. Answer. Filed October 17, 1901. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of
THOMAS J. GEARY.

Affidavit of P. H. Anderson.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

P. H. Anderson, being duly sworn, deposes and says:

That on the 23d day of July, 1900, complaints were filed in the office of the clerk of the District Court of the United States, Second Division, District of Alaska, in four certain actions entitled, Melsing vs. Tornanses, Rogers vs. Kjellman, Comptois vs. Anderson, and Chipps vs. Lindeberg et al.

That on said 23d day of July, 1900, Arthur H. Noyes, as Judge of said Court, made orders wherein and whereby he appointed Alexander McKenzie receiver to take charge of and work certain mining claims described in the complaints in said actions; and enjoining and restraining the defendants from in any wise interfering with said property of which the said McKenzie was by said orders appointed receiver.

That thereafter, on the 10th day of August, 1900, the said Arthur H. Noyes, acting as Judge of said District Court, made an order in each of said actions, continuing

in force the orders made on said 23d day of July, 1900, and conferring further and additional powers upon said Alexander McKenzie.

That thereafter and within the time allowed by law, the defendants in said actions petitioned said Arthur H. Noyes and the said District Court over which said Arthur H. Noyes presided, for an order allowing an appeal from the said orders appointing a receiver and enjoining and restraining defendants, but the said Arthur H. Noyes and the said District Court over which said Arthur H. Noyes presided, denied said petition, and refused to allow defendants to appeal from said orders, or any part thereof.

That thereafter, on the 29th day of August, 1900, the Honorable W. W. Morrow, one of the Judges of this Court, made an order allowing an appeal from the order so made in each of said actions, and directed a writ of supersedeas to issue out of this Court, commanding the said Arthur H. Noyes to refrain and desist from any further proceedings on said order appointing a receiver, and directing and commanding the said Alexander McKenzie to return and restore to the defendants in said actions all of the property of which he had taken possession as receiver, and a writ of supersedeas was on said day issued out of this Court in each of said actions, in accordance with the order of said Honorable W. W. Morrow, and on the same day, to wit, the 29th day of August, 1900, a citation in each of said cases was issued out of and under the seal of this Court directed to the said District Court of the United States, Second Division, District of Alaska.

That on the 14th day of September, 1900, said original citation in said cases was filed in the office of the clerk of the District Court of the United States Second Division, District of Alaska, and on the same day certified copies of the order allowing the appeal and of the writ of supersedeas were also filed in the office of the clerk of said Court.

That on the same day, to wit, the 14th day of September, 1900, a certified copy of said writ of supersedeas was served upon said Arthur H. Noyes and a certified copy was served upon said Alexander McKenzie in each of said cases.

That on the said 14th day of September, 1900, and at all the times hereinafter mentioned, Thomas J. Geary was the attorney for said Alexander McKenzie. That on the said 14th day of September, 1900, said Thomas J. Geary was and is now a member of the bar of this Court.

That before the said 14th day of September, 1900, said Alexander McKenzie had taken from the mining claims described in the complaints in said actions a large amount of gold-dust, and on said 14th day of September, 1900, had in his possession gold-dust which had previously been taken from said claims, of the value of about two hundred thousand dollars.

That on the said 14th day of September, 1900, and on the 15th and 16th days of September, 1900, and after the service on said McKenzie of a certified copy of said writ of supersedeas in each of said cases, and after demand had been made upon said McKenzie that he comply with said writ of supersedeas and return to the defendants the property which he had taken as receiver,

and particularly the gold-dust then in his possession, said Geary advised said McKenzie that the only supersedeas which could issue in said actions was one directing and staying further proceedings, leaving the property in the condition in which it was at the time the writ was issued, and expressly advised the said McKenzie not to turn over said gold-dust, or any part thereof, to the defendants in said actions.

That the said Geary at the same time advised said McKenzie that the orders from which defendants had appealed and from which the Honorable W. W. Morrow, one of the Judges of this Court, had allowed appeals, were not appealable and that for that reason said McKenzie should not obey said writ of supersedeas.

That said Geary further advised said McKenzie that said orders were not appealable and that the writ of supersedeas issued under the order of said Honorable W. W. Morrow was void.

That the said Thomas J. Geary further advised said McKenzie that notwithstanding said writ of supersedeas, he, said McKenzie, was not compelled to turn over said gold-dust.

That on the first day of October, 1900, it having been made to appear to this Court that the said McKenzie refused to obey said writ of supersedeas or to turn over said property, or any part thereof, to the defendants, this Court made an order directing the United States marshal for the Northern District of California to proceed to Nome, Alaska, and enforce said writ of supersedeas. That the said marshal directed two of his deputies to proceed to Nome to enforce said writ. That said

deputies arrived in Nome on the 15th day of October, 1900, with a certified copy of the order made by this Court directing the United States marshal for the Northern District of California to enforce said writ of supersedeas.

That the said Thomas J. Geary on or about the 15th day of October, 1900, and after demand had been made upon said McKenzie by said marshal that he comply with said order and turn over to the defendants the gold-dust in his possession, advised said McKenzie that the said order made by this Court on the first day of October, 1900, was void, and further advised said McKenzie not to obey said order.

That said McKenzie did not obey or comply with said writ of supersedeas, nor did he obey or comply with the order made by this Court on the first day of October, 1900.

That as complainant is informed and believes, and so alleges, the conduct of said Thomas J. Geary as herein described was for the purpose of interfering with and preventing the enforcement of said writ of supersedeas and rendering the same ineffectual.

P. H. ANDERSON.

Subscribed and sworn to before me this 10th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 702. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Thomas J. Geary. Affidavit of P. H. Anderson. Filed May 13, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city and county of San Francisco, State of California, on the 18th day of May, in the year of our Lord one thousand nine hundred and one. Present, Hon. WILLIAM B. GILBERT, Circuit Judge; Hon. ERSKINE M. ROSS, Circuit Judge; Hon. THOMAS P. HAWLEY, District Judge.

In the Matter of
THOMAS J. GEARY,
Contempt. } No. 702.

Order to Show Cause.

Whereas, it has been made to appear by the affidavit of P. H. Anderson, on file herein, that Thomas J. Geary did, at various times and places since the 13th day of September, 1900, advise Alexander McKenzie to disobey and refuse to comply with those certain writs of supersedeas and the orders of this Court contained in said writs which were issued out of this Court on or about the 28th day of August, 1900, in those certain causes herein pending entitled and numbered as follows, to wit: Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose Comptois, Appellee, No. 632; John I. Tornanses, Appellant, vs. L. F. Melsing et al., Appellees, No. 634; William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636;

and furthermore, that the said Thomas J. Geary has, since the first day of October, 1900, advised the said Alexander McKenzie to disobey and refuse to comply with those certain orders which were issued out of this court or or about the first day of October, 1900, in said causes:

Now, therefore, on motion of Messrs. E. S. Pillsbury and F. D. Madison, attorneys of this Court, it is ordered that the said Thomas J. Geary personally appear before this Court, in its courtroom in the city and county of San Francisco, State of California, on Monday, the 14th day of October, 1901, at eleven o'clock in the forenoon of the said day, then and there to show cause, if any he has, why he should not stand committed for contempt of this Court;

It is further ordered that a certified copy of this order, together with a certified copy of the said affidavit of P. H. Anderson, be served upon the said Thomas J. Geary as soon as may be.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true, and correct copy of an order to show cause entered in the matter of Thomas J. Geary, No. 702, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals at San Francisco, California, this 25th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

UNITED STATES MARSHAL'S RETURN.

United States Marshal's Office,
Northern District of California.

I hereby return, that I received the within certified copy of order on the 25th day of May, 1901, and personally served the original order herein on the 25th day of May, 1901, on Thomas J. Geary, by delivering to and leaving with said Thomas J. Geary, said defendant named therein, at the city and county of San Francisco, in said District, a certified copy thereof, together with a certified copy of the affidavit of P. H. Anderson attached thereto.

San Francisco, May 27, 1901.

JOHN H. SHINE,
United States Marshal.

[Endorsed]: No. 702. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Thomas J. Geary. Certified Copy of Order to Show Cause with Return of Service. Filed May 28th, 1901. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of
THOMAS J. GEARY,
For Contempt.
No. 702.

Demurrer of Thomas J. Geary.

The demurrer of Thomas J. Geary, respondent in the above-entitled proceeding, to the complaint of P. H.

Anderson, filed herein on the 13th day of May, 1901, respectfully shows:

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things, or all or any of the matters or things, in said complaint to be true, in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer shows:

1. That the complainant herein has not in and by said complaint stated facts sufficient to show that this respondent is or was at all or any of the times specified in said complaint, or at any time or at all, guilty of acts, or of any act, constituting a contempt of this Honorable Court. And respondent in this behalf specifies the following particulars in which said complaint does not state facts sufficient to show that this respondent has committed a contempt of this Honorable Court:

(a) In this, that in and by said complaint said complainant seeks to charge this respondent with a criminal offense, and that said complaint, in a substantial and material particular, purports to be based upon the information and belief only of said complainant.

(b) In this, that said complaint, in the body of which this respondent is alleged to have given certain advice to one Alexander McKenzie as "the attorney for said Alexander McKenzie," with respect to the validity of certain orders and writs of this Court, and concerning the conduct of said McKenzie with respect to said orders and writs of this Court, and further alleges that the conduct of this respondent as in said complaint described "was

for the purpose of interfering with and preventing the enforcement of said writ of supersedeas and rendering the same ineffectual," does not allege nor state that the advice given by respondent to said McKenzie, as alleged in said complaint, was not given in good faith, nor that said advice so given by this respondent to said McKenzie was not in accordance with the honest opinion and judgment of this respondent, as the attorney for said McKenzie, with respect to the validity of said orders and writs and as to the duty and rights of said McKenzie thereunder, and does not allege that this respondent, in giving such advice to said McKenzie, intended in any manner wrongfully or unlawfully to interfere with or prevent the enforcement of any of the orders or writs of this Court mentioned in said complaint, nor to render the same or any thereof ineffectual.

Wherefore respondent prays that the citation heretofore issued in this proceeding requiring him to appear and answer for said alleged contempt of Court be discharged and said proceeding dismissed.

JAMES G. MAGUIRE,
Counsel for Respondent.

CERTIFICATE OF COUNSEL.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JAMES G. MAGUIRE,
Counsel for Respondent.

Service, by copy, of the within demurrer is hereby admitted this 17th day of October, 1901.

[Endorsed]: No. 702. In the United States Circuit Court of Appeals, Ninth Circuit. In the Matter of Thomas J. Geary, for Contempt. Demurrer of Thomas J. Geary. Filed October 17, 1901. F. D. Monckton, Clerk. James G. Maguire, Parrott Building, San Francisco, Cal., Counsel for Respondent.

At a stated term, to wit, the October term, A. D. 1901, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Thursday, the seventeenth day of October, in the year of our Lord one thousand nine hundred and one. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

In the Matter of
THOMAS J. GEARY. } No. 702.

Order Overruling Demurrer of Respondent Geary.

A demurrer of the respondent herein having been this day filed, and Mr. James G. Maguire, counsel for the respondent, and Mr. E. S. Pillsbury, amicus curiae, having been heard—

It is ordered that said demurrer be, and the same is hereby, overruled. To which ruling of the Court Mr. Maguire saved and was allowed an exception.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of
THOMAS J. GEARY,
For Contempt.
} No. 702.

Answer of Respondent Thomas J. Geary.

Now comes the respondent, Thomas J. Geary, in the above-entitled proceeding, and saving and reserving all objections heretofore made in his demurrer to the complaint herein, and answering under protest the order to show cause why he should not be punished for contempt of this Honorable Court, respectfully makes answer as follows:

I.

Denies that at various or any times and places, or at any time or place since the 15th day of September, 1900, or at any other time or at all, respondent advised Alexander McKenzie to disobey and refuse to comply, or to disobey or to refuse to comply, with those certain writs of supersedeas, or any writ of supersedeas, and the orders, or any order, of this Court, contained in said writs, or in any writ, issued out of this court on or about the 28th day of August, 1900, or at any other time or at all, in those certain causes pending herein entitled and numbered as follows, to wit:

Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose

Comptois, Appellee, No. 632; John I. Tornanses, Appellant, vs. L. F. Melsing et al., Appellees, No. 634; William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636; or in any causes or cause whatever; and denies that this respondent has, since the first day of October, 1900, or at any other time or at all, advised the said Alexander McKenzie to disobey and refuse to comply with, or to disobey or to refuse to comply with, those certain or any orders or order issued out of this court on or about the first day of October, 1900, or at any other time, or at all, in said causes:

And in this behalf respondent alleges that his only connection with said causes, or any of them, or with said Alexander McKenzie, in or with respect to said causes, or any of them, was as attorney and counsel for said McKenzie, as the duly appointed, qualified, and acting receiver of the District Court of the United States, Second Division, District of Alaska, where said several actions were pending, and from which Court said actions, and each and all of them, were taken to this Honorable Court on appeal; that while acting as the attorney and counsel for said McKenzie, as receiver as aforesaid, and not otherwise, this respondent was, on the 14th day of September, 1900, asked by said McKenzie to examine certain writs of supersedeas purporting to have been issued by the Clerk of this Honorable Court in certain of the above-mentioned actions, and to advise him, the said McKenzie, as to the validity, scope, and effect of said writs and as to his rights and duties thereunder.

That this respondent, as such attorney for said McKenzie, did, to the best of his ability and conscientiously

and honestly, make an examination of said writs and of all proceedings in said causes in so far as such proceedings were accessible to him in the city of Nome, in said Second Division, District of Alaska, where this respondent and said McKenzie then were, and did in like manner, to the best of his ability and conscientiously and honestly, to the extent to which the statutes and authorities governing the questions thus submitted to him were available in said District of Alaska, investigate the law upon the subject, and did, as a result of such investigation, reach the conclusion that said writs and each of them were and was invalid, and thereupon, in accordance with what he, the said respondent, understood and believed to be his duty as an attorney and counsel to his said client, and not otherwise, and without any intent or purpose to be disrespectful, or to act in any manner disrespectfully to this Honorable Court, or to advise or counsel or encourage the disobedience or evasion of said or any writs or orders, or writ or order, of this Honorable Court, and did state to said McKenzie the conclusion and judgment which he, the said respondent, had as aforesaid reached concerning the validity of said writs and orders, namely, that said writs and orders were, and that each of them was, invalid, and did thereupon, on said 14th day of September, 1900, in accordance with his honest and unprejudiced judgment as the attorney and counsel for said McKenzie, and not otherwise, advise the said McKenzie that said writs were, and that each of them was, in the opinion of this respondent, void; but did then and there advise the said McKenzie to immediately, on said 14th day of Sep-

tember, 1900, comply with the terms of certain orders of Hon. W. W. Morrow, one of the Judges of this Honorable Court, allowing appeals from the orders appointing said McKenzie receiver in said several actions, to cease working the mines in litigation in said actions, to withdraw all of his miners and other employees from said mines, and to cease all further operations as such receiver; and this respondent did then and there state to the said McKenzie that he would require additional time to determine the rights and duties of said McKenzie as such receiver with respect to certain gold, gold-dust, and money which had come into the possession of said McKenzie as such receiver;

That respondent did diligently and carefully and conscientiously and honestly examine and investigate all the laws and authorities available to him bearing upon the questions so submitted to him as such attorney and counsel by said McKenzie, and did prepare for said McKenzie a written opinion setting forth the results of his said investigation of said questions—a copy of which said written opinion of this respondent is hereto annexed, marked Exhibit "A," and made a part hereof.

That said written opinion (Exhibit "A") was not completed, nor ready for delivery to said McKenzie, until about 6 o'clock in the afternoon of the 15th day of September, 1900; that in the meantime, and prior to the completion of said written opinion (Exhibit "A"), the United States marshal for the District of Alaska, acting under orders of the Judge of the District Court of said Second Division, District of Alaska, calling to his aid

the military forces of the United States of America, had taken possession of the vault in which said McKenzie had deposited the gold, gold-dust and money, which had come into his hands as such receiver.

That the said orders of said District Judge directing the said United States marshal for said District of Alaska to take possession of said vault and of said gold, gold-dust and money contained therein, were made without the procurement, suggestion, or knowledge of this respondent.

That this respondent never gave to said McKenzie, either orally or in writing, any opinion or advice concerning the said writs or orders, or any of them, or concerning his rights or duties thereunder, except as hereinbefore stated, namely, said oral opinion and advice given to him as hereinbefore stated on said 14th day of September, 1900, and said written opinion (Exhibit "A") hereto attached.

II.

Further replying, respondent denies that on the 14th day of September, 1900, the original citation, or any copy of the order allowing the appeal in the case of Chipps vs. Lindeberg or Comptois vs. Anderson, was on file in the clerk's office in the District Court, Second Division of Alaska.

III.

Denies that on the 14th day of September, 1900, or at any time prior to the 17th day of November, 1900, this respondent was a member of the bar of this Honorable Court or an attorney or officer of said Court.

IV.

Respondent admits that on the 14th and 15th days of September, 1900, he advised said McKenzie that the orders from which defendants had appealed in said actions, and each of them, were not appealable orders, for the reasons set forth in the opinion (Exhibit "A") prepared by respondent for said McKenzie as hereinbefore stated.

And in this behalf respondent alleges that at the time of giving said advice to said McKenzie he had no knowledge that the amendment to the statutes of the United States allowing appeals from orders appointing receivers in such actions had been enacted, no copy of such amendment or of the statues containing the same having then reached said City of Nome in said District of Alaska.

V.

Respondent admits that on the 14th and 15th days of September, 1900, he advised said McKenzie that said orders were not appealable, and that the writs of supersedeas issued in said actions by the clerk of this Honorable Court on the 28th and 29th days of August, 1900 [and under the order of said Hon. W. W. Morrow, as this respondent has since learned], were, and each of them was, void.

But in this behalf respondent alleges that on said 14th and 15th days of September, 1900, he had no knowledge or notice of any kind that said writs of supersedeas, or any of them, were or was issued under or in obedience to or pursuant to any orders or order of said Hon. W.

W. Morrow, or that said Hon. W. W. Morrow, one of the Judges of this Court, had made any order or orders other than the orders allowing appeals in said actions.

And respondent further alleges that he had no knowledge or notice that any orders or order, other than the orders allowing said appeals in said actions, had been made by said Hon. W. W. Morrow directing the issuance of the writs or any writ of supersedeas in said actions or any of them until after his return from said City of Nome to the City and County of San Francisco on the —— day of November, 1900.

And further in this behalf alleges, upon his information and belief, that none of the attorneys or parties connected with any of said actions had any knowledge or notice of the making of such orders or of any such order until after said attorneys and parties had returned from said City of Nome to the City and County of San Francisco on or about the —— day of November, 1900.

VI.

Respondent denies that on the 15th day of October, 1900, or at any other time or at all, he advised said McKenzie to disobey or refuse to comply with the orders of this Honorable Court made on the first day of October, 1900, in the cases hereinbfore mentioned requiring said McKenzie to turn over to the defendants the gold-dust in his possession; and further alleges that said McKenzie did not request of respondent any opinion or advice as to his duties under said writs. Respondent believing, for the reasons hereinbefore stated, that no appeals had been taken in said actions, considered

said writs of October 1st as being void, and so stated to said McKenzie, but did not advise said McKenzie not to obey said orders of October 1st, nor to disobey any of said orders, nor to place any obstacle in the way of the enforcement of said orders or any of them by the deputy marshals of this Honorable Court, but on the contrary would, on said day, have advised said McKenzie, notwithstanding his belief that said orders were void, to obey the same as far as was in his power, and to aid and assist said marshals in the enforcement of said orders.

VII.

Respondent denies that his advice and conduct, or his advice or conduct, in the matters, or in any of the matters, set forth or described in the complaint herein, was for the purpose of interfering with or of preventing the enforcement of said writs of supersedeas, or of any writ of supersedeas, or of any orders or order made by this Honorable Court, or for the purpose of rendering said writs or writ, or orders or order, or any writ or order of this Honorable Court, ineffectual.

And in this behalf respondent alleges that his sole and only purpose in all of said matters, and in the advice given and in his conduct in said matters, was to conscientiously and in good faith discharge his duties as attorney to his client by giving to said client his honest opinion upon the legal questions submitted to him by such client after careful investigation of the questions submitted to him as such attorney, and at all times this respondent believed that in the opinions which he gave to said client he correctly stated the law, and was

sustained by the authorities cited in support of such opinions and advice.

VIII.

Respondent further alleges that he was not employed or retained by said McKenzie as his attorney or counsel, either individually or as receiver in said actions, until on or about the 15th day of August, 1900, and that prior to said 15th day of August, 1900, respondent was not employed or retained as the attorney for said McKenzie in any capacity, either individually or as receiver in said actions, and had no connection or relation with any of said actions or with any of the parties thereto, and further alleges that he has never at any time had any interest in the subject matter of any of said actions nor any interest in the success of any of the parties plaintiff or defendant in any of said actions, and that his relation to said actions has been solely as the attorney for said McKenzie as receiver therein, and not otherwise.

IX.

That it was never the intention of this respondent at any time to exhibit to or be guilty of any contempt of this Honorable Court or any of the Justices thereof, nor to disobey or advise disobedience of any of its lawful orders or writs.

Wherefore respondent prays that the citation heretofore issued herein be quashed and the respondent discharged.

JAMES G. MAGUIRE,
Counsel for Respondent.

Exhibit "A" to Answer of Thomas J. Geary.

Nome, Alaska, September 15th, 1900.

Alexander McKenzie, Esq., Nome, Alaska.

Dear Sir: Answering your request for my opinion in reference to the papers served on you in the actions in which you have been appointed receiver by the District Court of Alaska, Second Division, I respectfully submit the following:

From an examination of the papers served on you and the records filed with the clerk of the District Court of Alaska, at Nome, it appears that the defendants in the said actions have applied to the Circuit Court of Appeals that they be permitted to take an appeal from the order of this Court allowing an injunction and appointing you receiver; that on the filing of such petition, Judge Morrow, of the United States District Court of California, allowed them to prosecute such an appeal and directed that they give a supersedeas bond, and upon the filing of such bond a writ of supersedeas do issue in the different cases.

Your duties in the premises must be determined from the consideration of all the papers, as well as the protest filed with you by the plaintiffs in said actions and their claim that they will hold you personally responsible for whatever property is now in your hands as such receiver. It is not pretended that Judge Morrow has made any decision revoking the order of Judge Noyes appointing you receiver; he has merely permitted an appeal from such order to be taken to the Circuit Court of Appeals which alone, after a proper hearing, can

make such an order. At the present time, no appellate Court has made any decision revoking or declaring irregular or illegal the order heretofore made by Judge Noyes appointing you receiver, so that you are to-day as much the receiver in the respective causes in which you were appointed as you were before the issuance of the writs therein by his Honor, Judge Morrow.

The writ of supersedeas was issued on an order signed by Judge Morrow in which he prescribed its effect and what its operation should be. We find two of such orders in the following cases in which the completed records have been sent to the clerk of this District Court, as the law requires, to wit,

In Rogers vs. Kjellman, and
Melsing vs. Tornanses.

An examination of the records in these cases shows that Judge Morrow merely directed that the usual order of supersedeas should issue, and did not incorporate in it any directions commanding you to deliver the possession of any property to anybody, or that your possession of any property should be disturbed or interfered with by anybody. No clerk has authority to make a writ to contain any provisions other than those directed by the Judge in the order, which is the basis of the writ. The order is the authority for him to issue the writ, which is but another form evidencing the decision of the Court, and can be no broader than the original order which supports it. You have a right, and it is your duty, to rely upon the directions contained in the order signed by

the Judge, and where they are different from the order signed by the clerk, the order of the Judge must prevail.

In Chipps vs. Lindeberg et al., and the other cases, the only papers served on you, beside the demand of plaintiffs, is a certified copy of what purports to be a writ of supersedeas issued by the clerk of the United States Court of Appeals; such clerk is without authority to issue such a writ, except when ordered so to do by a Judge or Justice of such court, and if effect can be given to such writ, the right of the clerk must be shown in the manner pointed out by statute, by the filing of the order of the Judge ordering such writ of supersedeas to issue, allowing such writ and the prosecution of the appeal. The usual and customary way in which appeals are taken, and in fact the one pointed out and required by statute, is to file with the clerk of the court from which the appeal is taken a copy of the writ of error or appeal, the order for the supersedeas and the citation directed to the respondents. In these latter cases none of these papers have yet reached the clerk. I can reasonably presume, however, that Judge Morrow has proceeded no differently in those cases than in the cases first enumerated, and that his order directing the writ of supersedeas to issue is no broader than in those cases, and does not contain the language found in the clerk's writ commanding you to turn over the possession of the property to the defendants.

A writ of supersedeas never operates to reverse or nullify an order of a Court granting an injunction or appointing a receiver; its purpose is merely to stay all proceedings in the court from whence the appeal is

taken, leaving the question of the correctness or incorrectness of such antecedent proceedings to be determined on the hearing of the appeal. I interpret this order to be merely the ordinary writ of supersedeas, as I do not know of any authority which authorizes Judge Morrow to make any further or additional order in this class of cases, and under the ordinary writ of supersedeas you are only commanded to abstain from proceeding further in the premises, leaving you clothed with all the power which you obtained as receiver from Judge Noyes, and entitled to continue in the possession of whatever property has come into your hands, but prohibited from taking any other properties into your possession or proceeding as receiver any further in the premises.

The plaintiffs contend, by their notice served on you, that the order of Judge Morrow permitting an appeal in these cases is void for the following reasons, as I gather from their protest: That if the order appealed from is to be considered as an order granting an injunction, then that while the right of appeal to the Circuit Court of Appeals may be allowed, Judge Morrow was without authority to grant a writ of supersedeas which would stay the operation of the injunction. In this I think they are correct, as from an examination of the Alaska Code and the Federal Statutes prescribing how appeals may be taken from District Courts of the United States to the Circuit Court of Appeals, it is expressly provided that a supersedeas to stay an injunction can only be granted by the District Court making the order for the injunction, or by one of the appellate Judges, when such

appellate Judge was present at the hearing of the application for an injunction. This matter has been passed on many times by the Supreme Court and this decision affirmed in

In re Haberman Manufacturing Co., 147 U. S. 525,

where the Supreme Court held that the matter of granting a supersedeas in injunction cases rested entirely in the discretion of the District Judge, and that his refusal to permit a supersedeas could not be controlled by the Supreme Court, and that mandamus would not issue from the Supreme Court to compel him to issue a supersedeas.

In my opinion, the order of Judge Morrow, the appeal not being from his court, and he not having been present at the hearing of the motion ordering the injunction, was in excess of his jurisdiction, prohibited by the United States statutes and void. If we consider the appeal as being from an order appointing a receiver, I do not think that an appeal lies from such an order to the Circuit Court of Appeals. This matter was fully considered by the Supreme Court of the United States in the case of

Highland Avenue & B. R. Co. vs. The Columbian Equipment Co., 168 United States, 672.

In the last-mentioned case the order appealed from was identical with the order made by Judge Noyes in the case appointing you receiver and commanding the defendants therein to do and perform certain acts. The appellant in that case contended that the order was both

an order appointing a receiver and directing an injunction, as was contended by the defendants in this case. The Circuit Court of Appeals being in doubt as to whether they had jurisdiction to entertain the appeal certified the case to the Supreme Court of the United States, and asked for the opinion of that Court as to their jurisdiction. The Supreme Court decided that the order appealed from was only an order appointing a receiver, and that the mandatory portion was merely incidental to the receivership; that the order being for the appointment of a receiver, was not appealable from the District Court to the Circuit Court of Appeals, and that the latter Court was without jurisdiction in the premises.

In considering this case, I am satisfied that the Circuit Court of Appeals is without jurisdiction to entertain or hear an appeal from the order of Judge Noyes appointing you receiver; being without such authority, all orders made herein by such Court are, in my opinion, void.

The plaintiff demands of you that you retain this property; that he be permitted to make his motion in the Circuit Court of Appeals; that the appeal herein be dismissed because of want of jurisdiction in that court. I think the safest way for you to do is to hold all the property as you have it now, not making any change with it, or permitting any interference therewith until such time as the Circuit Court of Appeals, after having heard the parties, makes such order as it deems fit. As the writs are made returnable on the 28th of this month,

no very great amount of harm can accrue to any of the parties by your adopting this course.

Very respectfully yours,

State of California,
City and County of San Francisco. } ss.

Thomas J. Geary, being duly sworn, deposes and says: That he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters that he believes it to be true.

T. J. GEARY.

Subscribed and sworn to before me this 17th day of October, 1901.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for the Ninth Circuit.

CERTIFICATE OF COUNSEL.

I hereby certify that in my opinion the foregoing answer is well-founded in point of law.

JAMES G. MAGUIRE,
Counsel for Respondent.

Service, by copy, of the within answer, is hereby admitted this 17th day of October, 1901.

[Endorsed]: No. 702. In the United States Circuit Court of Appeals, Ninth Circuit. In the Matter of Thomas J. Geary, for Contempt. Answer. Filed October 17, 1901. F. D. Monckton, Clerk. James G. Maguire, Parrott Building, San Francisco, Cal., Counsel for Respondent.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of
JOSEPH K. WOOD.

Affidavit of Cabell Whitehead.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

Cabell Whitehead, being first duly sworn, on oath says:

I was the manager of the Alaska Banking and Safe Deposit Company, in the city of Nome, District of Alaska, and had exclusive charge of the bank and safe deposit vaults of that company from the 1st day of July until the 20th day of October, 1900.

Besides doing a general banking business the Company was equipped with safe deposit boxes, which were rented by the month to different persons for the storage and safekeeping of gold, gold-dust and other valuables.

About the 14th day of August, 1900, Alexander McKenzie, who had been appointed receiver of certain mining claims on Anvil Creek, in the Cape Nome Mining District, District of Alaska, engaged from this affiant eight safe deposit boxes in the said vault of the Alaska Banking and Safe Deposit Company, and deposited in the said boxes gold-dust and gold, said to be taken from the said

claims, pursuant to an order of the District Court of the Second Division of the District of Alaska, made on or about said date, so directing said McKenzie to deposit said gold.

That thereafter and until on or about the 15th day of October, 1900, said McKenzie deposited gold-dust, said to be taken from said claims, in said boxes, and on the 15th day of October, 1900, said McKenzie had so deposited and had on hand at said time gold-dust amounting in value, as I am informed and believe, to about the sum of one hundred and eighty thousand dollars.

That said McKenzie had been appointed receiver as aforesaid on the 23d day of July, 1900, by Arthur H. Noyes, Judge of said District Court, in the actions pending in said District Court entitled: Chipps vs. Lindeberg et al., Comptois vs. Anderson, Rogers vs. Kjellman, Melsing et al. vs. Tornanses, and Webster vs. Nakkela et al.; and during all of the times herein mentioned was acting as such receiver under said appointments.

That at all of the times herein mentioned Joseph K. Wood was, and now is, the duly appointed and acting attorney of the United States for the Second Division of the District of Alaska.

That on the 15th day of October, 1900, United States Deputy Marshal Shelley Monckton called upon me, in company with Capt. French, the commanding officer of the United States barracks at Nome, Mr. Samuel Knight, Mr. William H. Metson, and Mr. Fink, and said United States deputy marshal showed me the order made by this Honorable Court on the first day of October, 1900, where-

by the United States marshal of the Northern District of California was ordered to proceed forthwith to the city of Nome, in the District of Alaska, and then and there to enforce the orders and provisions of the writ of supersedeas issued by this Court in the case of Lindeberg et al. vs. Chipps, and other cases, on the 28th day of August, 1900, whereby said Alexander McKenzie, who had theretofore been appointed receiver as aforesaid in the cases hereinbefore mentioned, by said District Court of Alaska, was directed to forthwith return unto the defendants in said cases the possession of any and all property of which he had taken possession under and by virtue of the orders appointing him receiver.

That said United States deputy marshal at the same time served me with said order made by this Court on the first day of October, 1900, and thereupon said United States deputy marshal examined the vault records and ascertained the numbers of the said boxes, wherein said McKenzie had said gold-dust deposited, and thereupon I asked said United States deputy marshal if he had received the keys to said boxes from said McKenzie, and he answered that he had not. I then asked him why he did not force McKenzie to give up the keys, and he said that McKenzie did not have the keys, and I asked where they were and some one stated that they were in the possession of Joseph K. Wood, the United States attorney. I asked that I might be permitted to have an interview with Judge Wood before the boxes were forced open, in order to preserve the property of the bank. This was agreed to.

Affiant states, on information and belief, that on the same day and prior to the time when said United States deputy marshal came to said vault and served affiant with the said order of this Court, United States Deputy Marshals Monckton and Burnham had shown to the said Joseph K. Wood the said order of this Court, and had stated that they, the said United States deputy marshals, had come to Nome as officers of this Honorable Court to enforce said order and had demanded that he, the said Wood, should deliver to them the keys of McKenzie's said safe deposit boxes, inasmuch as they had been told by said McKenzie that said keys were in the possession of said Joseph K. Wood, and that said Joseph K. Wood had failed to comply with said demand.

Upon the agreement of said United States Deputy Marshal Monckton for me to see said Wood, I thereupon went out of the bank building and up Stedman avenue, where I met Judge Wood. I said to him: "I am informed that you have the keys to McKenzie's safe deposit boxes, and that, as you know, the United States marshals from San Francisco are now in possession of the vault, and threaten to break open McKenzie's boxes in order to enforce the orders of the United States Circuit Court of Appeals, if the keys are not forthcoming. I can see that no good purpose can be served to McKenzie or his friends by having this done, and as it will be a great inconvenience to me, I will be very glad if you will go down and see the marshals and deliver the keys to them under protest." His reply was: "If the sons of bitches want to see me, they know where to find me." I said: "Do you

mean for me to carry this answer to them?" He said: "I don't care whether you do or not." I then said to him: "Judge, will you give me the keys. It will be a matter of personal gratification to me if you will give me those keys, and will save me a lot of trouble." He then remarked: "I would not think of giving up those keys until I consult with a certain party." I replied to this: "There is no time for a consultation as they have now waited at my request for some time, and I think their patience is about exhausted." He turned on his heel, and as he walked up into the building, he said: "Let them continue with their damned burglaries." I returned to the bank and reported the result of my interview with the said Joseph K. Wood to the United States deputy marshal, and thereupon the said marshal, with the assistance of a locksmith, forcibly broke off the doors of the said boxes rented by the said Alexander McKenzie, and removed the said gold-dust therefrom.

CABELL WHITEHEAD.

Subscribed and sworn to before me this 14 day of May, 1901.

[Seal] SOUTHARD HOFFMAN,
Clerk United States Circuit Court, N. D. C.

[Endorsed]: No. 703. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Joseph K. Wood. Affidavit of Cabell Whitehead. Filed May 15, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city and county of San Francisco, State of California, on the 18th day of May, in the year of our Lord one thousand nine hundred and one. Present, Hon. WILLIAM B. GILBERT, Circuit Judge; Hon. ERSKINE M. ROSS, Circuit Judge; Hon. THOMAS P. HAWLEY, District Judge.

In the Matter of
JOSEPH K. WOOD,
Contempt.
} No. 703.

Order to Show Cause.

Whereas, it has been made to appear by the affidavit of Cabell Whitehead, on file herein, that Joseph K. Wood did, at Nome, Alaska, on the 15th day of October, 1900, willfully and intentionally hinder, retard, interfere with, and embarrass the United States Marshal of the Northern District of California, or his deputies, while the said marshal, by his deputies, was acting pursuant to, and in the execution of, certain orders or writs of this Court made and issued out of this Court on or about the first day of October, 1900, in those certain causes pending in this Court entitled and numbered respectively as follows, to wit: Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose Comptois, Appellee, No. 632; John I.

Tornanses, Appellant, vs. L. F. Melsing. et al., Appellees, No. 634; William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636; and furthermore, that the said Joseph K. Wood did, on said 15th day of October, 1900, willfully and intentionally attempt to prevent and thwart the said deputies and the said United States marshal from enforcing the said orders of this Court; and furthermore that the said Joseph K. Wood did, on said 15th day of October, 1900, willfully and intentionally speak with gross disrespect of this Court and its officers, and of the acts of the officers of this Court in carrying out the said orders of this Court:

Now, therefore, on motion of Messrs. E. S. Pillsbury and F. D. Madison, attorneys of this Court, it is ordered that the said Joseph K. Wood personally appear before this Court, in its courtroom in the city and county of San Francisco, State of California, on Monday, the 14th day of October, 1901, at eleven o'clock in the forenoon of the said day, then and there to show cause, if any he has, why he should not stand committed for contempt of this Court.

And it is further ordered that a certified copy of this order, together with a certified copy of the said affidavit of Cabell Whitehead, be served upon the said Joseph K. Wood as soon as may be.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true, and correct copy of an order to show cause entered in the Matter of Joseph K. Wood, No. 703, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals at San Francisco, California, this 25th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

UNITED STATES MARSHAL'S RETURN.

I hereby return that I personally served the original writ, of which the within is a certified copy, on the 28th day of June, 1901, on Joseph K. Wood, by delivering to and leaving with Joseph K. Wood, said defendant named therein, at Nome, Alaska, in the 9th Circuit, a certified copy thereof, together with a certified copy of the affidavit of Cabell Whitehead therein mentioned.

San Francisco, Cal., July 29th, 1901.

JOHN H. SHINE,
United States Marshal for the United States Circuit Court of Appeals, Ninth Circuit.
By William P. Gamble,
Office Deputy.

[Endorsed]: No. 703. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Joseph K. Wood. Certified Copy. Order to Show Cause, With Return of United States Marshal. Filed July 29, 1901. F. D Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of
JOSEPH K. WOOD.

Answer of Respondent Joseph K. Wood.

The respondent above named, Joseph K. Wood, reserving all exceptions and objections to the form and sufficiency of the affidavit of Cabell Whitehead, upon which the order to show cause herein is based, and reserving all objections to the form and sufficiency of the order to show cause herein, showing cause in obedience to said order, avers as follows:

Respondent states to this Honorable Court that he has no knowledge, at this time, whereby he can deny any of the mattters or things set forth on pages one, two, and three of the affidavit of Cabell Whitehead, attached to the above citation and served therewith on this respondent on or about the 25th day of June, 1901, at Nome, Alaska, and, therefore, assumes that the same are true.

Further answering, respondent admits that he was at the city of Nome, in the Second Division of the District of Alaska, on the 15th day of October, 1900, and that on that date he had in his possession certain keys said to belong to certain safe deposit boxes in the bank building of the Alaska Banking and Safe Deposit Company, in which said boxes, as respondent was informed and believed, was stored a quantity of gold-dust taken and extracted by Alexander McKenzie from certain placer mining claims of which he had theretofore been appointed

receiver. And respondent further states that on the morning of said date, between the hours of nine and ten o'clock, and after the said Alexander McKenzie had been arrested and taken into custody by virtue of a warrant of arrest theretofore issued out of said court, at the office of T. J. Geary, in the city of Nome, Alaska, to which said place the said Alexander McKenzie had been conducted by said officers, he, the said McKenzie then and there delivered to this respondent, for safekeeping, a pocket-book, containing, as the said McKenzie then stated to respondent, certain valuable papers belonging to the said McKenzie, the kind or character of which respondent has no knowledge, which said pocket-book, respondent afterwards learned, also contained the keys to said deposit boxes, at the time of its delivery to respondent as above set forth.

That shortly thereafter, on said day, one of the officers of this Honorable Court demanded of respondent the possession of said keys, but respondent did not deliver said keys to said officer for the reason that the said Alexander McKenzie was then and there present and did not direct or instruct respondent to so deliver up the possession of said keys, and respondent believed at that time that it was the wish and desire of the said McKenzie that respondent should keep said pocket-book as theretofore requested and directed.

Respondent further most respectfully states to this Court that his failure and refusal to give up the possession of said keys to the officer of this Honorable Court was not a purpose or intent on his part to hinder, embar-

rass or obstruct said officer in the discharge of his duty, or to render ineffectual any order or decree of this Court; nor was it the purpose or intention of respondent to offer any disrespect to this Honorable Court or any member thereof, or to be in contempt of court, but was an honest belief in the mind of respondent, at that time, that he had no authority or right to surrender possession of said keys without instructions from the said Alexander McKenzie, and against his wishes, as respondent then understood them. That if the conduct of respondent in the premises was in violation of the orders of this Honorable Court, respondent respectfully submits that it was the result of an error of judgment and a mistaken idea or sense of duty in the carrying out of a trust unknowingly assumed by respondent, and for which respondent at this time expresses most sincere regret.

Respondent further admits that on said 15th day of October, 1900, the said Cabell Whitehead likewise demanded of respondent the possession of said keys, but respondent failed to deliver the same for the reasons already stated, whereupon the officers of this Honorable Court, as respondent was informed, broke open said deposit boxes and removed said gold-dust therefrom. Respondent asserts that it is not true that he made use of the language charged against him in the affidavit of the said Cabell Whitehead, or any language of a like import or character, and further denies that he spoke in any terms of disrespect whatever of this Honorable Court or its officers, either in respect of said officers personally, or to their acts or conduct in carrying out the orders of Court.

Wherefore, respondent, having, as he believes, fully answered to the charge preferred against him, respectfully submits the foregoing statement of facts for the consideration of this Honorable Court, and should this Court determine therefrom that said acts constitute a contempt prays the most indulgent judgment of this Court consistent with the maintenance of its dignity.

JOSEPH K. WOOD,
Respondent.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

Joseph K. Wood, being first duly sworn, says that he is the respondent mentioned in the foregoing answer; that he has read the said answer, and knows the contents thereof, and that the said answer is true to the knowledge of affiant, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

JOSEPH K. WOOD.

Subscribed and sworn to before me this 17th day of October, 1901.

[Seal] GEO. E. MORSE,
United States Commissioner for the Northern District of California, at San Francisco.

[Endorsed]: No. 703. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Joseph K. Wood. Answer. Filed October 17, 1901. F. D. Monckton, Clerk.

In the Circuit Court of Appeals for the United States Ninth Circuit.

In the Matter of
C. A. S. FROST.

Affidavit of C. L. Vawter.

United States of America,
State and Northern District of California. } ss.

C. L. Vawter, being first duly sworn, deposes and says:

That in the months of September and October, 1900, and theretofore and thereafter, affiant was the duly appointed, qualified, and acting United States marshal for the District of Alaska, Second Division.

That on the 14th day of September, 1900, certain writs of supersedeas, which had been theretofore issued out of and under the seal of the above-entitled court in those certain cases entitled in such court, Lindeberg et al. vs. Chipps, Anderson vs. Comptois, Tornanses vs. Melsing et al., Kjellman vs. Rogers, and Nakkela et al. vs. Webster, were placed in the hands of affiant as said United States marshal for said district and division, with instructions to serve same upon various persons, including the Honorable Arthur H. Noyes, Judge of the District Court of the United States for said district and division, Messrs. Hubbard, Beeman and Hume, attorneys for the plaintiffs in the court last mentioned in said

cases, and on Alexander McKenzie, receiver in said cases; and affiant on said day by himself and his deputies duly served said writs personally at Nome, Alaska, upon said Arthur H. Noyes, Judge aforesaid, said Alexander McKenzie, and upon a member of said firm of Hubbard, Beeman & Hume, by delivering and leaving a certified copy of said writ in each of said cases to and with each of said persons.

Affiant further says that theretofore and on the 1st day of August, 1900, he arrived at Nome, Alaska, in the discharge of his official duties as such marshal, together with one C. A. S. Frost, who, during all the times herein mentioned was and is an attorney at law, and who, prior to the 1st day of August, and until he resigned after the occurrence of the events hereinafter narrated (to become assistant United States attorney for said division and district under appointment by Joseph K. Wood, United States attorney for said district), was a special examiner for the Department of Justice of the United States, who had been sent by said Department to Alaska for the purpose, among other things, of advising affiant as such marshal, and the clerk of such District Court, in the proper discharge of their respective official duties as such; and said Frost then and thereafter during all the times hereinafter stated did from time to time, during the period of time herein mentioned, advise affiant as such marshal and the clerk of said court in the performance of their respective duties.

On the 15th day of September, 1900, said Frost, while acting in his capacity as said special examiner and in his further capacity as legal adviser of affiant, rushed into affiant's office at Nome, Alaska, and then and there dictated and handed to affiant who was there present, a letter in words and figures following, to wit:

"Nome, Alaska, Sept. 15th, 1900.

"Hon. C. L. Vawter, United States Marshal, Nome, Alaska.

"Sir: Your attention is invited to that portion of section No. 846, Revised Statutes of the United States, which reads as follows:

" 'That where the ministerial officers of the United States have or shall incur extraordinary expenses in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States has the authority to allow the payment thereof under the special taxation of the District or Circuit Court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the extraordinary expenses of the judiciary.'

"If it shall be necessary for you to incur extraordinary expenses under this statute in suppressing specific unlawful acts, acts of violence or attempted violence, burglary, robbery, etc., you will be authorized to employ such force as may be necessary in the premises and the necessary expenses thereof incurred by you may be included in an extraordinary expense account, to be rendered and paid as provided in said section.

"Respectfully,

"C. A. S. FROST,

"Special Examiner Department of Justice."

Immediately thereafter said Frost ordered and directed affiant as such marshal to swear in a posse comitatus for the purpose of preventing the execution and enforcement of said writs of supersedeas. Said Frost then and there stated to affiant substantially as follows: "I am afraid that this crowd" (referring to the defendants in said cases in said District Court, i. e., the Wild Goose Mining and Trading Company, the Pioneer Mining Company, and P. H. Anderson) "are going to get that dust" (referring to certain gold-dust hereinafter mentioned); "you must swear in a posse comitatus and at all hazards prevent them getting it. In doing it you may have to fight the military, but you want to be prepared to fight anybody." To this affiant replied that he did not think there was any danger at such time of anybody breaking into the bank or creating a breach of the peace, but that if he (affiant) wanted a posse comitatus, instead of swearing in strangers whom he didn't know, he was authorized to call on the military forces of the United States That if he concluded he needed assistance, he would call on the military forces of the United States, to which Frost replied, "To hell with the military! You can't trust them." Affiant then and there further stated that the military were the only people at Nome and vicinity that he felt he could and would trust for that purpose.

Just at this point of the conversation affiant and said Frost started to leave the former's office, and said Frost continued to urge upon affiant to take the course which he (said Frost) had directed to be taken and to prevent the said gold-dust at all hazards from coming into the

possession of the defendants in said cases; but affiant declined to follow said advice and direction.

Affiant further avers that during all of said times said Frost was closely associated and frequently in company with said Arthur H. Noyes and said McKenzie, and the latter afterwards boasted to affiant that he (said McKenzie) used said Frost as so much putty, illustrating with his hands the manipulation of putty, saying further, "He is putty in my hands."

And on information and belief affiant further avers that said Frost at such times was in the employ of said McKenzie, and for services rendered to the latter during said times received at least six hundred dollars.

Affiant further avers that in said month of September and theretofore considerable gold-dust hereinbefore mentioned, aggregating on said 14th day of September, 1900, over $200,000 in value, had been extracted from the mines involved in the litigation hereinbefore mentioned, and had been deposited by said McKenzie as such receiver, and was at such time in the vaults of the Alaska Banking and Safe Deposit Company at Nome, Alaska, in certain boxes, to which said McKenzie, as receiver in said cases appointed by said Arthur H. Noyes, as Judge aforesaid, then and there had access, and no one else had access thereto.

And affiant further avers that during all the times herein stated there were two or three hundred United States soldiers stationed either at Nome or at Fort Davis, four miles distant therefrom, from whom he could and would have obtained assistance in the performance of his duties as such marshal if necessary. And the commanding officers of said troops at all of such times expressed them-

selves as ready, willing and able to assist affiant in the performance of his duties as such marshal, and said Frost at all times well knew this fact.

C. L. VAWTER.

Subscribed and sworn to before me this 31st day of August, 1901.

[Seal] F. D. MONCKTON,

Clerk United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 744. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of C. A. S. Frost. Affidavit of C. L. Vawter. Filed September 9, 1901. F. D. Monckton, Clerk.

UNITED STATES MARSHAL'S RETURN.

JOHN H. SHINE, U. S. Marshal.

A. L. FARISH, Chief Office Deputy.

DEPARTMENT OF JUSTICE.

UNITED STATES MARSHAL'S OFFICE.

Northern District of California.

Telephone No. 5232.

(Copy.)

San Francisco, Cal., Sept. 26, 1901.

Marshal of the United States Supreme Court, Washington, D. C.

Sir: Enclosed you will please find two certified copies of order to show cause in the matter of C. A. S. Frost, together with a certified copy of affidavit of C. L. Vawter.

I am requested by the attorneys to ask you to serve one of the certified copies of order and the certified copy of affidavit of C. L. Vawter upon Mr. C. A. S. Frost, who is supposed to be in Washington, D. C. You can probably find him in company with Judge Noyes. Please make your return on one of the certified copies of order and mail same to me as soon as convenient.

Very respectfully,
JOHN H. SHINE,
United States Marshal,
Per A. L. Farish,
Chief Office Deputy.

At a stated term, to wit, the September term, A. D. 1901, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom in the city of Seattle, in the State of Washington, on Monday, the ninth day of September, in the year of our Lord, one thousand nine hundred and one. Present: Honorable JOSEPH McKENNA, Associate Justice, Supreme Court United States; Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge.

In the Matter of C. A. S. FROST. } No. 744.

Order to Show Cause.

Whereas, it has been made to appear to this Court by the affidavit of C. L. Vawter, this day filed, that C. A. S. Frost, special examiner of the Department of Justice, did,

at Nome, Alaska, on the 15th day of September, 1900, act contrary to, and in violation of, the writs of supersedeas and the orders of this Court contained in said writs, which were issued out of this court on or about the 28th day of August, 1900, in those certain causes herein entitled and numbered as follows, to wit: Jafet Lindeberg et al., Appellants, vs. Robert Chipps, Appellee, No. 631; P. H. Anderson, Appellant, vs. O. Jose Comptois, Appellee, No. 632; John I. Tornanses, Appellant, vs. L. F. Melsing et al., Appellees, No. 634; Mickle J. Nackkela et al., Appellants, vs. Herbert H. Webster, Appellee, No. 635, and William A. Kjellman, Appellant, vs. Henry Rogers, Appellee, No. 636:

Now, therefore, upon motion of Messrs. Page, McCutchen, Harding & Knight, attorneys of this court, it is ordered that the said C. A. S. Frost personally appear before this Court, in its courtroom in the city and county of San Francisco, State of California, on Monday, the fourteenth day of October, 1901, at eleven o'clock in the forenoon of the said day, then and there to show cause, if any he has, why he should not stand committed for contempt of this Court.

And it is further ordered that a certified copy of this order, together with a certified copy of the said affidavit of C. L. Vawter, be served upon the said C. A. S. Frost as soon as may be.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true, and correct copy of an order to show cause entered in the Matter of C. A.

S. Frost, No. 744, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said Circuit Court of Appeals, at San Francisco, California, this 13th day of September, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.
By Meredith Sawyer,
Deputy Clerk.

Served certified copy of within order and certified copy of affidavit of C. L. Vawter on within named C. A. S. Frost, personally, at Washington, D. C., this 20th day of Sept., 1901.

AULICH PALMER,
United States Marshal,
D. C.

[Endorsed]: No. 744. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of C. A. S. Frost. Order to Show Cause. Filed September 26, 1901. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of C. A. S. FROST. } No. 744.

Answer of Respondent C. A. S. Frost.

The respondent above named, C. A. S. Frost, reserving all exceptions and objections to the form and sufficiency

of the affidavit of C. L. Vawter, upon which the order to show cause herein is based, and reserving all objections to the form and sufficiency of the order to show cause herein, showing cause in obedience to said order, avers as follows:

Respondent admits that at the time stated in the affidavit of said Vawter, he, the said Vawter, was the United States marshal for the district mentioned in said affidavit.

Respondent admits that he arrived at the port of Nome in company with the said Vawter on or about the first day of August, A. D. 1900; he admits that he is an attorney at law. Respondent admits and alleges that for about five years prior to the first day of August, 1900, he was in the employ of the Department of Justice at the city of Washington; that on or about the third day of July, A. D. 1900, he was ordered by the attorney general to proceed to Alaska to report to the Department and to represent the said Department as a special examiner thereat; admits that, among other things, it was his duty to advise the said United States marshal and the clerk of the District Court in respect to their accounts and the methods of conducting the business of their offices; and he admits that, from time to time during the period mentioned in the said affidavit, he did advise the said United States marshal and the clerk of said court in respect thereto.

Respondent further admits that on the 15th day of September, 1900, that he dictated and handed to the said United States marshal a letter, a copy of which is set

forth in the said affidavit. In respect thereto, respondent avers that the said marshal had then in his employ a stenographer that for some time prior thereto had been, with the consent of the said marshal, taking dictation and writing for this respondent, at a compensation fixed by the said stenographer, and that, for some time prior thereto, with the consent of the United States marshal, his office had been used by this respondent for the transaction of his business and writing and dictating letters, except that on occasions the said stenographer, at the request of respondent, came to the room in which the respondent lived and took dictation there; that because of said facts respondent dictated said letter at the office of the said marshal; but he denies that he either entered the said office or dictated the said letter in an unseemly or in an improper manner; that the reasons which led up to the dictating of said letter are as follows, and not otherwise: That a long time prior to the said 15th day of September, 1900, the said C. L. Vawter, as United States marshal, aforesaid, and frequently between the seventh day of August, A. D. 1900, and the date of said letter, called the attention of this respondent as representative of the Department of Justice, to the fact, as the said Vawter stated to respondent, that the force of deputies allowed him by the Department was totally and obviously inadequate to protect life and property in the town of Nome, that said town of Nome was an unorganized mining camp and had no police protection, and that he, the said marshal, feared in case of emergency his force of deputies

would be unable to preserve order or prevent riot or bloodshed in case of emergency, and had requested the advice of respondent as to what he should do in case an emergency should arise needing a larger force than that at his command under regular employment; that respondent then told the said Vawter, in response to said Vawter's inquiry, that in case of emergency the law provided that he, as United States marshal, could call upon the good citizens of the town of Nome to aid him in suppressing violence, should he, the said marshal, need such assistance, and that he, as marshal, could pay such persons for their services in the manner provided by law; respondent was informed and believed that the said marshal had called the attention of the attorney general of the United States to the lawless conditions prevailing at Nome and to the inadequacy of his force of deputies; that on or about the fifteenth day of September, 1900, the date of said letter, there was great excitement among the people in Nome, and in and around a certain bank building, known as the Alaska Banking and Safe Deposit Company, a large number of men had assembled who were boisterous and appeared unruly and were armed with deadly weapons and apparently threatening violence, and that it was believed, and currently reported, that there would be bloodshed and that the bank would be broken into and robbed; that on said day the said marshal met this respondent on the street in Nome and called respondent's attention to the existing conditions and stated that he was afraid there would be serious trouble, confirming respondent's opinions, formed from

observation of the conditions prevailing, that there would be bloodshed; that thereupon, for the guidance of the United States marshal, in case he should need such assistance, respondent did write and handed to the marshal the letter in question; that no person, directly or by implication ever requested respondent to advise the marshal in any respect as to what he should do or should not do under the circumstances, except the said marshal himself.

Respondent denies that he ever ordered or directed the said marshal, as such, or at all, to swear in a posse comitatus or any other body, for the purpose of preventing the execution and enforcement of writs of supersedeas or for any other purpose whatsoever, and he denies that he ever suggested to said marshal the employment of additional person or persons, except in so far as he, the said marshal, deemed it necessary in the proper execution of his duties as marshal; and the respondent denies that he knew or was informed or had knowledge that any attempt had been made or was being made to enforce any writ of supersedeas, or that any attempt was being made to prevent the enforcement of any writ or writs of supersedeas.

Respondent denies that he stated to the said marshal in substance or effect, "I am afraid that this crowd" (referring to the defendants in said cases in said district court, i. e., the Wild Goose Mining and Trading Company, the Pioneer Mining Compay, and P. H. Anderson) "are going to get that dust" (referring to certain gold-dust hereinafter mentioned); "you must swear in a posse comitatus and at all hazards prevent them getting it. In do-

ing it you may have to fight the military, but you want to be prepared to fight anybody"; that respondent did not know and was not informed that any such actions were pending or that there was any dispute between the parties mentioned, or that the parties mentioned existed except that by reputation he did know that there was such a concern as the Pioneer Mining Company; respondent, however, avers that he may, and likely did, in a conversation at or about that time, with the said marshal, state to him that there was danger of the bank before mentioned being broken into and that there might be a breach of the peace, and the respondent at said time believed, and had good cause to believe, such to be the fact.

Respondent denies that he ever at any time or place, directly or indirectly, in words or in substance, advised or suggested to the said marshal that he, the said marshal, should not employ or call upon the military forces of the United States for assistance, or that he ever said, "To hell with the military! You can't trust them," or words of similar import or effect; and the respondent denies that at any time or place said marshal ever expressed a preference for the military of the United States, or that he ever stated that he was authorized to call on the military forces of the United States, and that if he concluded he needed assistance he would call on the military forces, and denies that the marshal ever stated to him that the military were the only people at Nome or vicinity that he felt he could trust; that, on the contrary, on many occasions, the said marshal, in discussing the people of Nome, known to the said marshal and to this respondent, had named persons who could be trusted in

his opinion, and who could not be trusted and who should not be trusted.

Respondent denies that he ever urged or suggested or directed the said marshal to take any steps whatever for the purpose of preventing gold-dust or any other property from coming into the possession of the defendants in the cases mentioned, and the respondent states that he did not know, and was not informed, that the defendants in any cases or any parties to any cases, desired or wanted or attempted to get any gold-dust or any property whatsoever, except in so far as this respondent, in common with others, feared and had good reason to fear that the bank before mentioned would be broken into.

Respondent denies that during the times mentioned in the said affidavit he was closely associated or that he was at all associated, or frequently in company, with the Honorable Arthur H. Noyes, the Judge of the District Court for Alaska, or with Alexander McKenzie, except that he knew both of said gentlemen, and that he had had occasion to consult with said Judge in reference to the fees and compensation of certain officers, but that he had no communication with the said Judge and no correspondence or business with him, except solely in relation to official business; that Judge Noyes had treated the respondent in a manner becoming a gentleman, and that respondent respected Judge Noyes and endeavored to treat him with respect and as one gentleman should treat another; that at that time respondent's acquaintance with Alexander McKenzie was very slight, that respondent simply knew him and had talked with him on one or two occasions; that one of the conversations so had with

the said McKenzie was had at the request and at the instigation of the said marshal and in connection with the said marshal's duties.

Respondent denies that he was ever at any time in the employ of the said Alexander McKenzie or that he ever rendered any services for the said McKenzie, directly or indirectly, or that he ever received for services performed or to be performed the sum of six hunded dollars or any other sum or amount whatsoever.

Respondent has no knowledge or information sufficient to form a belief as to whether the said Alexander McKenzie, at any time, boasted to the said marshal that he, the said McKenzie, used this respondent as so much putty, or illustrated with his hands the manipulation of putty, or that the said McKenzie said, "He is putty in my hands." Respondent does not believe that the said McKenzie ever used any such language or ever made any such illustration; that, if he did, he said and acted what was untrue; and that the said marshal well knew that such statements and alleged actions were untrue.

Respondent has no knowledge or information sufficient to form a belief as to whether there was considerable gold-dust or any gold-dust which had been extracted from the mines involved in litigation deposited by McKenzie as receiver, or otherwise, in the vaults of the Alaska Banking and Safe Deposit Company, or as to whether said McKenzie and no one else had access thereto except that respondent had been informed and believed that an order had been made in the case of Chipps vs. Lindeberg et al., requiring that the gold-dust ex-

tracted from the mine in that case be deposited in the vaults of the said banking and deposit company.

Respondent admits that on the 15th day of September, 1900, a considerable number of United States soldiers were stationed at Fort Davis, four miles distant from Nome, but that respondent was advised and understood that the soldiers had expressed much dissatisfaction at the performance of patrol or other duties at Nome, as the said marshal well knew; and that respondent at said time did not know that the said marshal could compel, or had the right to call upon the military for assistance.

Respondent admits that during the times mentioned in the affidavit of the said Vawter, he was the United States marshal as stated. Respondent denies that he had any knowledge that on the fourteenth day of September, 1900, writs of supersedeas issued out of the Circuit Court of Appeals for the United States, Ninth Circuit, in the cases of Lindeberg et al. vs. Chipps, Anderson vs. Comptois, Tornanses vs. Melsing et al., Kjellman vs. Rogers, Webster vs. Nakkela, were placed in the hands of the said marshal for service upon any persons or that the said marshal, on that day, either by himself or his deputies, had served writs aforesaid upon any person whatsoever, in any manner whatever, except that in the case of Chipps vs. Lindeberg et al. he was informed and believed that a supersedeas had been granted in said cause, and the respondent knew that proceedings had been taken in said cause in appeal from an order said to have been made by the Judge of the District Court of the District of Alaska appointing Alexander McKenzie receiver.

Respondent, further showing cause, denies that he did on the 15th day of September, 1900, or at any other time, act contrary to or in violation of any writ of supersedeas granted or order made by this Honorable Court or that he ever, at any time or place, by word or act or omission, intended to act or aided or abetted or acted contrary to or in violation of any writ or order issued or granted in any case by this Honorable Court.

Wherefore he prays that he be adjudged not guilty of the offenses charged in the affidavit of the said Vawter.

C. A. S. FROST,
Respondent.

P. J. McLAUGHLIN,
Counsel for Respondent.

United States of America,
State and Northern District of California. } ss.

C. A. S. Frost, being duly sworn, says that he is the respondent in the above-entitled matter, named and referred to in the above answer and showing of cause, and in a citation and order issued by this Honorable Court requiring said respondent to be and appear before this Honorable Court on the 14th day of October, A. D. 1901, in its courtroom in the city and county of San Francisco, State of California; that he has read the above and foregoing answer and showing of cause, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes it to be true.

C. A. S. FROST.

Subscribed and sworn to before me this 17th day of October, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 744. In the United States Circuit Court of Appeals, Ninth Circuit. In the Matter of C. A. S. Frost. Answer and Showing of Cause. Filed October 17, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the thirteenth day of May, in the year of our Lord one thousand nine hundred and one. Present, The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

JAFET LINDEBERG et al.,
Defendants and Appellants,
vs.
ROBERT CHIPPS,
Appellee
No. 631.

Order to Take Deposition of Cabell Whitehead.

An application having been made by E. S. Pillsbury, Esquire, amicus curiae, for a rule upon Joseph K. Wood, the United States District Attorney for the Second Division of the District of Alaska, to show cause, if any there be, why he should not be punished for contempt of the

above-entitled court for obstructing the enforcement at Nome, Alaska, of a certain writ of supersedeas issued in the above-entitled case, and it appearing that one Cabell Whitehead is a necessary and material witness in such inquiry:

Now, therefore, it is by the Court ordered that the deposition of said Cabell Whitehead be taken before the Honorable E. H. Heacock, United States Commissioner at San Francisco, California, and said Commissioner is here by designated as the Commissioner of this court for that purpose, and that such deposition be taken at such time as said Commissioner shall designate, upon such oral interrogatories as may be propounded to said witness by E. S. Pillsbury, Esquire, or F. D. Madison, Esquire, as amici curiae herein, and upon such cross-interrogatories as may be propounded to said witness by anyone on behalf of said Wood.

It is furthermore provided that such reasonable notice shall be given to said witness and any other person interested herein, as said commissioner shall determine, and that said deposition when taken be certified by said commissioner, and returned to the clerk of this court with all reasonable speed.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled cause.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 16th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

In the United States Circuit Court of Appeals, for the Ninth Circuit.

JAFET LINDEBERG et al.,
Defendants and Appellants,

vs.

No. 631.

ROBERT CHIPPS,
Plaintiff and Appellee.

In the Matter of the Application for a Rule upon Joseph K. Wood, the United States District Attorney for the Second Division of the District of Alaska, to Show Cause, if any There be, Why He Should Not be Punished for Contempt of the United States Circuit Court of Appeals for the Ninth Circuit, for Obstructing the Enforcement at Alaska of a Certain Writ of Supersedeas Issued in the Above-entitled Cause.

Deposition of Cabell Whitehead.

Thursday, May 16, 1901.

Deposition Taken in Above Matter Before Hon. E. H. HEACOCK, Commissioner.

F. D. MADISON, Esq., as Amicus Curiae, in Support of the Order to Show Cause.

THOMAS J. GEARY, Esq., on Behalf of Himself.

CABELL WHITEHEAD, having been duly sworn, testified as follows:

(Deposition of Cabell Whitehead.)

Mr. MADISON.—Q. Please state your name and residence.

A. My name is Cabell Whitehead. I am a resident of Washington, I guess; temporarily of Nome, Alaska. Washington is my family's residence.

Q. Washington, D. C.? A. Yes, sir.

Q. What is your business, Doctor?

A. I was, at the time of my going to Alaska, the assayer of the Bureau of the Mint. I have not resigned that position, but I am on an extended leave. It is more than probable I will never assume the duties of the office again.

Q. Is your office in that occupation in Washington, District of Columbia?

A. Yes, sir, District of Columbia.

Q. You have held that position for some time?

A. Since 1889.

Q. Were you at Nome during the year 1900?

A. I was.

Q. In what business were you engaged?

A. I was the manager of the Alaska Banking and Safe Deposit Company.

Q. And as such manager, did you have exclusive charge of the bank and the safe deposit vaults of that company, from the 1st day of July to the 20th day of October, 1900? A. I did.

Q. Did the company have a vault containing safe deposit boxes? A. It did.

Q. Did you rent any of those boxes to Alexander McKenzie?

A. Yes, sir, he had a number of them.

(Deposition of Cabell Whitehead.)

Q. About what time, if you recollect, did you rent them to him?

A. Mr. McKenzie rented one box for himself almost as soon as he arrived in Nome; I do not remember the date. I could get the date by referring to the books. That was a personal matter. Later he rented, I think, two other boxes, after he was appointed receiver, and at a little later date he rented quite a number of boxes. The total number he rented, I think I have stated somewhere, but I cannot now without reference to the papers give it. I think there were eight at one time rented.

Q. Did he have eight safe deposit boxes in your vault rented during part of the month of August, part of September, and part of October, 1900?

A. Yes, sir, there were not less than eight, I think. My recollection is now, though I cannot state positively, that there were eleven boxes in all.

Q. Did he deposit any gold-dust in those boxes taken by him as receiver under appointment by Judge Noyes?

A. That is my understanding of it. He had gold-dust deposited there, and I understood it came from that source.

Q. Do you know approximately how much gold-dust he had on deposit there, say on or about the 15th day of October, 1900?

A. That is the time that the deputy marshal arrived there?

Q. That is the time that the deputy marshal took gold-dust out of the safe deposit boxes.

(Deposition of Cabell Whitehead.)

A. I weighed that gold, and my impression now is that it was about $180,000 or $185,000. I did not melt it or assay it, so that is only an approximation.

Q. For some time previous to this, had there been approximately that amount deposited there?

A. The amount was increased considerably during the period that he operated these mines, as I understand it. I did not always know when Mr. McKenzie went to the boxes. There was a clerk in charge of the vault. He went in and put whatever he wanted in the boxes, and took out what he wanted. It was supposed he was depositing the gold-dust; in fact, there was an order of the Court directing him to deposit the gold-dust.

Q. On or about September 14, 1900, as I understand it, the writ of supersedeas issued by this Circuit Court of Appeals reached Nome, and after that time, and until October 15th, do you know whether Mr. McKenzie deposited any gold-dust in those boxes?

A. Not of my own knowledge. A certain amount of gold-dust, I was told, was deposited there by direction of the Court, and Captain French, of the army, was present when it was delivered. I was not in the bank. I was told that it was brought in. I do not know if it went into the boxes or not, but it is my impression that Mr. McKenzie did not go into the boxes after the writ of supersedeas was issued, or, rather, after it arrived there, at all—after September 14th.

Q. State what occurred, if anything, on October 14th or 15th, with respect to the taking of the gold-dust out

(Deposition of Cabell Whitehead.)

of these safe deposit boxes by the United States Deputy Marshal Shelly Monckton.

A. Mr. Shelly Monckton came in, I think, on the afternoon of that day, and stated he was an officer of the court, with an order to seize this gold and turn it over to the defendant in the case, and asked for the numbers of the boxes.

Q. Did he show you that order, or read it to you?

A. I will not say now positively that he did. It is quite probable that he did. At any rate, he served the order. I had met him, been introduced to him, and knew his business, so I did not insist on it, if he did not. My impression is that he went through the form; in fact, I was introduced to him again at that time by Captain French, of the army, I think, who came in with a squad of men to enforce the order if I should resist it. I protested against the breaking open of the boxes, and declined to give them the numbers of the boxes, even, and then, of course, they very soon took the record which laid on the desk, and from that secured the numbers of these boxes, the vault was opened at the time. They went in and located the boxes. I then asked if they had the keys to the boxes. The deputy said he did not. I said, "Why did you not get them from Mr. McKenzie?" He said, "We asked him for them but he did not have them." I asked who had them. He said Judge Wood had the keys.

Q. Judge Joseph K. Wood?

A. Judge Joseph K. Wood, the United States Attorney. I asked if there had been a demand made for the keys. I was very much opposed to having my boxes

(Deposition of Cabell Whitehead.)

broken open. I thought the keys should be gotten and the boxes unlocked. Mr. Monckton said he had endeavored to get the keys, and could not do it, and there was nothing left to do but to break the boxes open. I then requested that I be allowed to see Judge Wood, to see if I could induce him to give up the keys, as I did not care to have the property I was in charge of injured, unless it was absolutely necessary. They delayed the opening of the boxes while I went to see Judge Wood. I found him on Steadman avenue, and said to him that the deputy marshals were in charge of the vault, and that they would like to see him about giving up the keys. He said, "If the sons of bitches want to see me, they know where to find me," and started to leave. I said, "Judge, this is a matter of some interest to me. I cannot see that you gain anything by allowing them to destroy my property, when there will be no advantage gained to you people. I wish very much you would go down and see them," or something to that effect. He said he did not care to see them at all. I said, "Will you deliver those keys to me; will you let me give them the keys if you don't want to do it?" He said, "I will not give up those keys to any one until I have seen a certain person and talked with him." I said, "There is no time to see anyone; they have already been there quite a while, and they are going to break the boxes open if the keys are not produced in a few minutes. I think their patience is pretty well exhausted now." He said, "Let them proceed with their burglaries," and walked off. I went back and re-

(Deposition of Cabell Whitehead.)

ported that I was not able to get the keys, and the boxes were opened.

Q. At that time, when you went to Joseph K. Wood, you had been informed, had you, by Mr. Monckton, that he had already seen Joseph K. Wood, and told him that he was an officer of the Circuit Court of Appeals, or deputy marshal, and had come up there for the purpose of carrying out the order of the Circuit Court of Appeals?

Mr. GEARY.—Objected to as pure hearsay.

Mr. MADISON.—May I ask for whom you appear?

Mr. GEARY.—I appear for myself. I don't know how many of these proceedings you are going to institute against anybody. There is no citation for anybody to appear yet. Under the procedure, this testimony can be used against one person or another. As there are applications for writs against me as well as Mr. Wood, and others, I think I have a right to appear for myself.

Mr. MADISON.—I am very glad to have you appear. I wished to know for whom you appear.

Mr. GEARY.—I know what you want. I will ask you who you appear for?

Mr. MADISON.—I appear for the Court.

Mr. GEARY.—Where is the order directing you to appear for the Court?

Mr. MADISON.—It is here.

The COMMISSIONER.—I have a certified copy of it.

(Deposition of Cabell Whitehead.)

Mr. MADISON.—Read the question, Mr. Reporter.

(The reporter reads the previous question.)

A. No, sir, I was not told that. Mr. Monckton did not tell me that. Somebody, either Mr. Monckton or Mr. Metson, said that Wood had the keys. That was about all there was of it.

Q. Now, at the time that Joseph K. Wood spoke of Deputy Marshals Monckton and Burnham as sons of bitches, did he know that they were at Nome as officers of this court?

A. I presume he did, as it had been street talk there for several hours, but I had no way of knowing.

Q. Did you say anything to him to the effect that they were deputy marshals?

A. Yes, sir, I stated they were deputy marshals. I spoke of him as the deputy marshal of the court.

Q. Did you tell him that they were there, as he knew, for the purpose of carrying out the orders of this court?

A. My impression now is that I stated, "As you know, the deputy marshal is in the vault, and he is going to break those boxes open unless he gets the keys." That was certainly the purport of my remarks, if not the words.

Q. After leaving Joseph K. Wood, did you report the result of your conversation to Deputy Marshal Monckton?

A. I simply reported the result of the interview to the deputy marshal, that I was unable to secure the keys.

Q. Do you know C. L. Vawter?

A. Yes, sir, I know Mr. Vawter.

Q. What position, if any, did he occupy?

A. He was the marshal.

(Deposition of Cabell Whitehead.)

Q. At Nome? A. At Nome.

Q. Did you see him on or about the 15th day of September, 1900?

A. If that is the date on which the order of supersedeas was returned, I did see him on that day. He was in the bank.

Mr. GEARY.—It was received on the 14th.

A. The day that the row was in the bank, he was there. I don't remember the date. About that time.

Mr. MADISON.—Q. What conversation did you have with him at that time, if any?

A. Well, I was called into the bank. I was in my private room at that time. I went down through this crowd, and Vawter served me with a paper, which I could not see was directed to me at all. I think it was a copy of this supersedeas. I said, "Why do you give me this paper?" He said, "They ordered me to serve you with a copy of it," or something to that effect. Beyond that, I had nothing more to say. At a later date, probably that evening or the next day, Mr. Vawter came to my private office in the bank, and showed me a letter, or an order—it was on letter paper, anyway—it was not on legal paper—from the Judge to him, directing him to take charge of the money in these boxes, and not to allow any one to have access to it. He said, "Now, it is in your charge, and you will look to me for orders in regard to it."

Q. Did he assume any control over the vaults or boxes, or anything?

A. Not beyond notifying me. There were a couple of

(Deposition of Cabell Whitehead.)

soldiers there at the time, but they had been there quite a long time doing police duty. Those men were supposed to be indirectly under my orders, subject to my orders. Of course, they were under Captain French, of the barracks, primarily, but they were supposed to be directed by me. I do not know what orders Marshal Vawter gave those men. He may have given them some orders. He did not in any way interfere. He was never in the bank, except as a customer on banking business, or socially afterwards. I never saw him around there.

Q. You say there were a couple of soldiers there?

A. There were a couple of men stationed there.

Q. They had been for some time previous to that?

A. Yes, sir, they were put there at the request of the Judge, when the amount of money began to accumulate. The Court felt it ought to have some protection in a community like that. I went with Judge Noyes to see Captain French. He made the request for them to be stationed there. I said it was agreeable to me, and would give them every facility; we would be very glad to have them. So these men were detailed, and there was a guard there continually day and night from that time up to the time I left on the 21st of October.

Q. Those soldiers were there long prior to September 15, 1900? A. Yes, sir.

Q. They were not put there at that date?

A. No, sir.

Q. Now, this letter that you say Vawter had received from Judge Noyes, was that a letter or a formal order—what was it, do you remember?

(Deposition of Cabell Whitehead.)

A. My idea was that it was an order, but it was on letter paper. I only glanced over it. I felt that my course was clear in the matter, and that the order did not concern me particularly, and he did not leave me a copy of it. I simply glanced over it, and the matter passed out of my mind.

Q. Was it typewritten?

A. No, sir, I think it was written in longhand; just an autograph letter; that is my impression now.

Q. Mr. Vawter stated it was from Judge Noyes?

A. Mr. Vawter stated it was from Judge Noyes, and my impression is that I read the letter signed by him.

Q. Subsequent to that time, was there anything to prevent, if you know, Alexander McKenzie, aside from this letter that you speak about, or aside from the verbal instruction that you had from the marshal, from going to the safe deposit boxes and taking out gold from them?

A. No, sir; he had access to them. He could have gone to them, previous to that.

Mr. GEARY.—Q. Previous to what?

A. Previous to the letter I am speaking of.

Mr. MADISON.—Q. After the letter?

A. After the letter, he could not.

Q. He could not? A. No, sir.

Q. What was there to prevent him from doing it?

A. In the first place, I would not have let him go. I would certainly have notified the marshal that he wanted to go in, and he would have had to have got another order from the court, or else shown an order from a higher court.

Q. You mean—

(Deposition of Cabell Whitehead.)

Mr. GEARY.—Let him finish his answer. Just ask him the question. Do not lead him.

A. That is exactly what I mean. I want to be clear upon the matter. I had determined on my course. It was fairly marked. I was there to protect myself. I had no interest in it. In the absence of an order of a higher court, I was bound to obey the court at Nome.

Mr. MADISON.—Q. By "a higher court," you consider the Circuit Court of Appeals?

A. Yes, sir; but I knew nothing about the higher court except from street talk.

Q. You had received no order from the court?

A. I had received no order from the court.

Q. If there was an order from this court, the Circuit Court of Appeals, directing him to turn over the property, or the golddust, there would have been no objection on your part?

A. If it had been properly served on me, there certainly would not have been.

Q. Was there any stipulation between the attorneys with respect to his going to the boxes or turning over the gold-dust, or anything of that kind?

A. That opens another phase of this somewhat complicated problem, which I am very glad to have elucidated or being allowed the opportunity to elucidate. There was a verbal understanding between the contending parties, and afterwards reduced to writing, by which I agreed to pay the bills for labor.

Mr. GEARY.—Q. You had better put the names in.

(Deposition of Cabell Whitehead.)

A. From 10 Above and 2 Below, on Anvil Creek, and the labor bills for the Pioneer Mining Company. I do not remember those numbers, Judge, if you do.

Mr. GEARY.—Discovery and No. 2 Below.

A. Mr. Metson and Mr. Knight, representing the defendants, and Mr. McKenzie, and Judge Geary, representing the plaintiff in the case, agreed that if I would advance the money to settle these claims for labor, that they would allow the amount of gold necessary to settle this indebtedness to be taken from these boxes, and that an order from the Court for this purpose would be obtained. I made these payments, and later on Mr. Knight and Mr. McKenzie met in the bank, and the order was obtained. Vawter was notified, as I remember now. This gold was taken out, and the indebtedness for 2 Below and 10 Above was settled. We were never able to get all parties to agree in the other case, and that was not settled until after the marshals came up. In regard to your question, I would state that there existed this verbal agreement, that when these parties agreed on the amounts and the arrangements, that the order would be gotten from the Court, and the boxes would be opened in the presence of all parties.

Mr. MADISON.—Q. So that, with the consent of Mr. Knight and the other attorneys for the defendants in those receivership cases, Mr. McKenzie, as far as you know, could have gone there and taken out the gold-dust?

A. If he had the necessary order of the Court.

Q. Did he say anything about the Court?

(Deposition of Cabell Whitehead.)

A. He said he could obtain an order from the Court for that purpose.

Q. Now, with respect to the conversation that you had with Mr. Joseph K. Wood?

A. I should like to add one thing further to my last answer. I would like to state that my business with these gentlemen was solely in regard to the delivery of the amount of gold necessary to settle my indebtedness. It did not go into any question beyond that at all.

Q. After your conversation with Joseph K. Wood, you went back and reported the result of the interview to the deputy marshal, and thereupon the deputy marshal forcibly broke the safe deposit box, did he not?

A. Yes, sir, with the assistance of a locksmith.

Q. And took the gold out? A. Yes, sir.

Q. Is it your recollection that Joseph K. Wood said, "Let them continue with their burglaries," or "Let them continue with their damned burglaries"?

A. I think he said, "Let them proceed with their damned burglaries." I do not think he said "continue"; I think he said "proceed"—"Let them proceed with their damned burglaries."

Cross-Examination.

Mr. GEARY.—Q. The fact about that agreement for the gold-dust is this: That at the time the first writ of supersedeas came in, McKenzie closed down the mines, and all of the men employed on the mines came to town, wanting their wages. Is that not the fact?

(Deposition of Cabell Whitehead.)

A. I do not know about the closing down of the mines. I know the men came to town and wanted their wages.

Q. There was a good deal of excitement as to whether they should be paid or not? A. Yes, sir.

Q. Then an agreement was made between McKenzie and all the attorneys in the case that he should issue time checks to the men for what was coming to them, you should cash them at the bank, and when the total amount was made up, that the attorneys would secure an order from Judge Noyes directing McKenzie to take from the gold-dust in the bank enough to pay your indebtedness. Is that not it?

A. Yes, sir, as I understood it.

Q. That was the only gold-dust you had any interest in?

A. That was all, except I was interested in it all to the extent of keeping myself clear of subsequent litigation.

Q. You had no interest in the results of the litigation, or the ownership of the dust?

A. Not the slightest.

Q. But after you received that order from Judge Noyes presented to you by Vawter, McKenzie could not have got into that vault, or had access to that dust, without having obtained or brought to you an order from Judge Noyes? A. No, sir, he could not.

Q. Don't you remember that Mr. Vawter gave instructions to the military guard in charge of the vault

(Deposition of Cabell Whitehead.)

that same day that McKenzie should not be allowed to go in there?

A. I do not know that of my own knowledge. I said in my direct examination that he might have done so.

Q. Let me see if I cannot refresh your memory: Do you remember when Knight and McKenzie were going there to get the dust, to pay the amount advanced by you, that you refused to let McKenzie go in until you got an order of the Court, and when I asked you why you refused to let him go in, you said the military guard would not let him go in; that as each guard was changed, the order was given from one to the other not to let him go in?

A. Yes, sir. I did not say I heard Vawter give that order.

Q. You knew after the 15th of September that the instructions were given to the guard, as it was changed, from time to time, not to let McKenzie go in?

A. Yes, sir. I think you will find that order came from Captain French.

Q. He was in command of the military?

A. These soldiers were part of the military. They would only take orders from their superior officer.

Q You do know, as a fact, that the military in charge of that vault, from the 15th of September, had instructions from Captain French not to let McKenzie have access to the vault?

A. I think that is correct. I know, furthermore, when this order was fixed up, we went into the vault without seeing Captain French or anyone else.

(Deposition of Cabell Whitehead.)

Q. You mean the order that Judge Noyes gave for taking out that dust? A. Yes, sir.

Q. All parties who were interested in the gold were present? A. Yes, sir.

Q. As a matter of fact, there was a guard placed there at your request?

A. Excuse me—not at my request. I told Judge Noyes, and I told Mr. McKenzie, I was perfectly able and competent to take care of my own money.

Q. At that time there was a fear in the town because of the character of the people there, that there might be an attack made on that vault?

A. It existed almost entirely with you people; never with me.

Q. It existed with people interested in the dust; they wanted it guarded?

A. Not all. I did not care anything about it.

Q. I mean people interested as claimants for the dust? A. Yes, sir.

Q. In fact, both the plaintiffs and defendants were anxious to have it guarded—to have a guard placed over the dust? A. I do not know anything about that.

Q. Did you not talk with the other people about it?

A. No, sir.

Q. The guard was placed there long before the supersedeas arrived? A. Yes, sir.

Q. Placed there as police protection?

A. Yes, sir.

Q. By reason of an order that you got Judge Noyes to give Major French?

(Deposition of Cabell Whitehead.)

A. Let me go into that, and give you the history of the whole thing.

Q. I think the history is in evidence.

A. You say I did it.

Q. I say you requested Judge Noyes to make the order, didn't you? A. No, sir, Mr McKenzie did.

Q. Mr. McKenzie did? A. Yes, sir.

Q. That was along in August sometime, I think.

A. Some time along in the middle of the summer, before there was any question raised.

Q. It was simply a matter of policing the bank?

A. Yes, sir.

Q. Before any writs arrived? A. Yes, sir.

Q. The guard continued under that order down to the 15th of September?

A. Yes, sir, later than that. Down to some time in October. It was continued to the time I left, the 21st of October—I think a few days afterwards.

Q. On the 14th of September there was quite a fracas in the bank? A. Yes, sir.

Q. Quite a disturbance? A. Yes, sir.

Q. Who made the disturbance?

A. I cannot say who started the disturbance. I can give you a history of the whole thing as far as I knew it.

Q. The people representing the defendants in large numbers came to the bank? A. Yes, sir.

Q. Armed? A. I cannot say that.

(Deposition of Cabell Whitehead.)

Q. What is your opinion as to whether they were armed?

A. I take it for granted, when a man goes to have a row, he goes with something to have it with.

Q. Especially in that country? A. Yes, sir.

Q. How many were there there?

A. Enough to fill the bank.

Q. And all partisans of the defendants in these actions?

A. I suppose so, Judge, but I cannot swear they were.

Q. What was their demand? What was the cause of their being there? What did they say?

A. The enforcement of this writ of supersedeas.

Q. They proposed to enforce it themselves, didn't they? A. That was my understanding of it.

Q. And if necessary they proposed to go into the bank, break the boxes, and take out the dust?

A. They said they would.

Q. They said they were prepared to go in and break the boxes and take out the dust? A. Yes, sir.

Q. In obedience to the writ? A. Yes, sir.

Q. That is the fact, is it not?

A. I think the fact is this: That they came down there to bluff me into it.

Q. To bluff you into giving them the dust?

A. Yes, sir.

Q. Those were the men representing the Lane and Pioneer Mining Company's interest? A. Yes, sir.

(Deposition of Cabell Whitehead.)

Q. They did declare, did they not, if you would not let them have that dust peaceably, they had force enough to go into the vault and get it?

A. No one came to me and stated that. It was talked of around town.

Q. There was talk, if they could not get it peaceably, they were there with force enough to take it forceably; was not that the subject of the general conversation and talk?

A. The position, as stated by one of them—I do not remember who—was this: That they had this order; it had been secured in a proper manner, and that the Court declined to enforce it; that the marshal would not enforce it, and they thought, as good citizens, they had the right to enforce the order of the Court. I had some argument on that line with somebody—I do not remember now who—and he gave that as a justification for the actions of his friends.

Q. Did you think it would be beneficial to your banking institution to have a mob like that go into your safe deposit vault and crack it or break it, and try to find their money?

A. No, sir. If I had thought so, I would probably have permitted them to go in.

Q. You, as manager of the bank, opposed their actions, did you not? A. Yes, sir.

Q. On behalf of the bank? A. Yes, sir.

Q. And the other depositors who had boxes in that vault? A. Yes, sir.

(Deposition of Cabell Whitehead.)

Q. Was not that guard increased that afternoon, on the vault? A. I think it was.

Q. At whose request was the additional guard placed at the vault that afternoon?

A. I requested that a squad of men be sent down to clean these people out and make them leave the bank.

Q. What time did you make that request?

A. I cannot remember the time.

Q. About noonday; about the time of the row?

A. Yes, sir. I talked with these people, and tried to get them to go out. They did not seem disposed to do it, and I sent a man up to ask Captain French to send a squad of men to clean them out.

Q. To clean them out, to protect the bank and the bank property.

A. They were interfering with my business.

Q. You sent for that guard because they were disturbing your business and threatening to wreck the bank, was not that it?

A. I don't know that any threats were made. They were standing around, obstructing business and interfering with people who had business with the bank.

Q. And would not allow people to go to the vault?

A. Any one went to the vault who wanted to.

Q. Their presence was objectionable to you as manager of the bank? A. Yes, sir.

Q. You sent for an additional guard to come down to remove them from the bank building?

A. Yes, sir.

(Deposition of Cabell Whitehead.)

Q. Was that not it? A. Yes, sir.

Q. What time of the day did that military guard come down—about noon time?

A. I think it was somewhere about 1 o'clock.

Q. How long after that was it that Marshal Vawter came to you with the order of the Court, directing the marshal to take charge of this disputed property?

A. It was either that afternoon or the next morning.

Q. It was either that afternoon or the next morning?

A. I cannot say which—within a few hours afterwards.

Q. When that order was presented to you, do you remember that the Lane people and the Pioneer Mining people expressed their fears that unless something was done to keep McKenzie out, he would take the gold-dust out and spirit it out of the territory?

A. The "Lane" people is a pretty broad statement. In fact, I never found out who the Lane people were.

Q. Tom Lane was in the bank?

A. No, sir, he was not in there then.

Q. Louis Lane,

A. Yes, sir, I saw him there.

Q. You saw Lafe Pence there? A. Yes, sir.

Q. You saw Sam Knight there? A. Yes, sir.

Q. Did they not declare they were afraid, if McKenzie had access to that vault, he would remove the gold-dust so that they could not find it? A. Yes, sir.

Q. Was that not the purpose for which they came in, to prevent him from removing the gold-dust?

(Deposition of Cabell Whitehead.)

A. Yes, sir.

Q. Did they not say they would be satisfied if they were assured McKenzie could not have access to it, if it was left with you, but their fear was it would be spirited away if he had access to the vault?

A. I never had a conversation with those people directly.

Q. I am asking you whether you heard them say in the bank that day—

Mr. MADISON.—Who do you mean by "they"?

Mr. GEARY.—I mean this armed guard.

Q. I am asking you if you do not know that the declarations they made were to this effect: That they had come there to prevent McKenzie spiriting the dust from the vault, because they feared he would do it.

A. Declarations of that sort were made, but I don't know that they were made by responsible people.

Q. Did you not hear Sam Knight say they did not propose to let McKenzie take the dust out?

A. Yes, sir.

Q. Was it not the fear that he would that prompted the mob to come there, rather than the desire to take the dust itself?

A. No, sir; I think they came down with the idea that they were going to put in their demand and walk off with it. I think they came there with the full expectation of getting it, and that it would be delivered to them.

Q. If they did not succeed in that, then their second

(Deposition of Cabell Whitehead.)

desire was to prevent McKenzie having access to it, for fear he would get away with it?

A. I hardly feel that I can swear to anything of that sort. That is my impression, anyway.

Q. That is your impression of what their wishes were?

A. Yes, sir.

Q. Don't you remember that on Saturday there was a good deal about trying to reach some agreement so that McKenzie would keep away from the dust, and that would quiet the fears of these people?

A. Yes, sir, I was requested by Lane to put a time-lock on the vault at 2 o'clock that afternoon.

Q. So that McKenzie could not get in?

A. So that McKenzie could not get in. I declined to do that.

Q. Did not Lane say to you they would be perfectly satisfied to let the matter stand if they could be assured that McKenzie would not have access to the vault?

A. Yes, sir.

Q. That is Charles D. Lane? A. Yes, sir.

Q. The President of the Wild Goose Mining Company?

A. I don't know who the officers are.

Q. Was it not because of that desire of those people to be assured that McKenzie could not have access to the vault, and after consultation with you—did you talk to Judge Noyes that day?

A. No, sir, I never saw Judge Noyes from the time I

(Deposition of Cabell Whitehead.)

went with him to see Captain French, except to see him on the street—I never talked to him.

Q. When Mr. Vawter brought you the letter signed by Judge Noyes, directing that McKenzie should not have access to the vault, that did not surprise you, did it, that Judge Noyes should have given such directions?

A. I do not know how to answer that.

Q. It was in furtherance of the wishes of the people who claimed the dust?

A. Yes, sir; I will admit that, that it was agreeable to them.

Q. That it was agreeable to them to have Judge Noyes make that particular command on you?

A. That is my impression.

Q. Taking the line that Charlie Lane had expressed that afternoon, that if they could be assured that McKenzie would not have access to the vault, they would be satisfied. Judge Noyes' order was really in furtherance of the wishes of the Lane people, as you understood their wishes at the time.

A. You ask questions which I have no means of answering except by street rumor. I do not know that they came from the Lane people at all. I will tell you what Mr. Lane said to me, or what Mr. Knight said to me.

Q. I say, taking the statement that Charles D. Lane made to you that they would be satisfied if they could be assured that McKenzie would not have access to the vault, and the fact was that you did receive this notice from Judge Noyes, you would then believe that that or-

(Deposition of Cabell Whitehead.)

der was made in furtherance of the wishes of the Lane people?

A. I would say that it was agreeable to the Lane people.

Q. The purpose of Judge Noyes making that order at that time directing the marshal to take possession of the gold-dust, and excluding McKenzie from the vault, was, you believed, in accordance with the wishes of the Lane people?

A. I did not have any belief. I was busily occupied with my own affairs, and I was very glad when the danger of a row was past.

Q. You were very glad when Judge Noyes gave that order to Vawter? A. Yes, sir.

Q. Because you knew all danger of a row between these parties was past? A. I believed it would be.

Q. That the Lane people and the Pioneer people would be satisfied with the dust being left in the situation it was, in the hands of the marshal, so long as McKenzie would not have access to it?

A. That was my understanding.

Q. About this matter of keys to the vault: You told us in your direct examination that Mr. Monckton came early in the afternoon with a squad of soldiers under the command of Major French. How many soldiers?

A. I thought a great many more than necessary; probably a half a dozen in addition to the two there.

Q. That was the first time that Mr. Monckton had come to you asking access to the vault?

(Deposition of Cabell Whitehead.)

A. Yes, sir.

Q. He came accompanied by the soldiers?

A. Yes, sir.

Q. And stated to you it was his intention to go in immediately to the vault and take the dust; is that right?

A. I will not say "immediately." He said it was his intention to carry out the order of the court.

Q. He was then prepared to carry it out?

A. Yes, sir.

Q. Did he have his locksmith with him?

A. No, sir, I think he was sent for later.

Redirect Examination.

Mr. MADISON.—Q. Prior to the time on or about September 14, 1900, these parties came to you with the order of this Court for the writ of supersedeas, and stated that they wished to carry out the writ and obtain this gold-dust, had that writ been served on Judge Noyes and Alexander McKenzie, and had they refused to comply with it?

Mr. GEARY.—If you know, you can answer it.

A. I do not know about that. Anything I could testify to in that connection would be hearsay.

Mr. GEARY.—As a matter of fact, it had not been.

Mr. MADISON.—Q. What time was it that these parties came to the bank on September 14th?

A. Somewhere about noon; between 12 and 1 o'clock. These dates I did not pay any attention to.

(Deposition of Cabell Whitehead.)

Q. That was the only time that they came?

A. There was more or less disturbance there on a couple of days, but the main difficulty was over at the end of the first day.

Q. When you speak about your presumption that Mr. Lane would be satisfied if Mr. McKenzie were not allowed to open the boxes or go to the boxes, do you mean that he was better satisfied than if the gold-dust was turned over to him in accordance with the order of this Court?

A I do not imply that at all. The impression which Mr. Lane left on my mind was that, rather than use force or any violence, if he could be assured that the gold would remain there, that he would await the action of the Court below.

Q. That was because the Court up there and Mr. McKenzie would not comply with the writ of supersedeas in delivering the property to them?

A. Yes, sir.

Q. And inasmuch as they refused up there to comply with the order of the Court, and deliver the property over, then, rather than use force, you presumed he would be satisfied if the property should remain there?

A. I feel very sure he was willing to do that; that he was willing to allow the gold to remain there, if he could feel it was secure until they could get a deputy marshal in there to execute the order of the Court. He was very clear on that.

Q. None of the parties used any force or threats to-

(Deposition of Cabell Whitehead.)

wards you, did they, or towards your property there, when they came there?

A. I do not know. I do not think anyone wanted to hurt me, personally. I think they wanted to get that gold pretty bad.

Q. When I speak of "the parties," I mean any of the defendants in those cases; any of the authorized parties representing them; did they make any threats towards you?

A. Not personally; no. The threat was simply to go in and execute the order of the court. It was always on that ground. It was not to do a thing in violence, but to execute the order of the court. My difference with them was that I could not see that a private party had a right to constitute himself an officer of the court. I took the ground that until I was properly served by the officers of the court, or a party that I recognized as an officer of the court, that my hands were tied; that if I delivered this gold into the hands of these people, and subsequent litigation determined it did not belong to them, that I would be liable for it, and in that position it was my duty to await until I was relieved of this responsibility and the Court assumed it.

Q. All of this breach of the peace, if there was any, and trouble arose from the fact that the parties up there would not carry out the orders of this Court?

A. That is as I understand it.

(Deposition of Cabell Whitehead.)

Recross-Examination.

Mr. GEARY.—Q. You did not understand, however, when they first came to the bank at noontime that any writs had been served on anyone.

A. I did not know anything about it. I did not know the men were in town. I was called from up above, and dropped down into this wiggling mob.

Q. That is the first thing you knew about any writs being in town?

A. That is the first I knew.

Q. You did not know that any writs were served on Judge Noyes, McKenzie, or anyone else?

A. No, sir, I did not know anything about that.

Mr. MADISON.—Q. When you speak about the parties being armed, you did not see any arms?

A. I did not see any arms.

Mr. GEARY.—Q. What is your impression, from the crowd that was there and your knowledge of the men which made up that crowd, were they armed or unarmed?

A. I think some of them were armed and some unarmed.

CABELL WHITEHEAD.

Subscribed and sworn to before me this 17th day of May, 1901.

E. H. HEACOCK,

United States Commissioner for the Northern District of California, at San Francisco.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

JAFET LINDEBERG,
Defendant and Appellant,

vs.

ROBERT CHIPPS,
Plaintiff and Appellee.

No. 631.

In the Matter of the Application for a Rule Upon Joseph K. Wood, the United States District Attorney, for the Second Division of the District of Alaska, to Show Cause, if Any There be, Why He Should not be Punished for Contempt of the United States Circuit Court of Appeals for the Ninth Circuit, for Obstructing the Enforcement at Alaska of a Certain Writ of Supersedeas Issued in the Above-entitled Cause.

Commissioner's Certificate to Deposition of Cabell Whitehead.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

I certify that, in pursuance of the order of the Court aforesaid, made and entered in the above-entitled matter and cause, on Monday, the 13th day of May, 1901, a certified copy of which order is hereunto prefixed, that on the 16th day of May, 1901, at 11 o'clock A. M., before

me, E. H. Heacock, United States Commissioner at San Francisco, California, designated in said order as the Commissioner for the purpose of taking the deposition of Cabell Whitehead, the witness named in said order, at my office, in Room 87 in the United States Appraisers' Building, in the city and county aforesaid, the said Cabell Whitehead personally appeared, and F. D. Madison, Esq., appeared as amicus curiae in support of the order to show cause aforesaid, and Thomas J. Geary, Esq., appeared in his own behalf, and the same Cabell Whitehead being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said, as appears by his deposition hereto annexed.

And I further certify that said deposition was then and there taken down in shorthand writing by Clement Bennett, a competent stenographer and disinterested person, under my personal supervision, and by him put into typewriting, and after it had been so put into typewriting it was carefully read over by said witness and sworn to and subscribed by him in my presence.

I further certify that I have retained the deposition in my possession until I now seal the same and return it to the Clerk of the court aforesaid for which it was taken.

In testimony whereof, I have hereunto set my hand at my office aforesaid this 20th day of May, 1901.

E. H. HEACOCK,

United States Commissioner, at San Francisco, and Commissioner Designated by the Court Aforesaid for the purpose of Taking said Deposition.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. } No. 703.

Transcript of Proceedings Before Commissioner at Alameda County Jail.

Alameda County Jail, Thursday, May 23, 1901.

Before Hon. E. H. HEACOCK, United States Commissioner.

Appearances:

F. D. MADISON, Esq., as Amicus Curiae in Support of the Order to show Cause.

THOMAS J. GEARY, Esq., for Alexander McKenzie.

Mr. GEARY.—Now, Mr. Commissioner, I ask that the taking of this deposition be postponed. Mr. McKenzie is not in a condition to be examined, and, as his attorney, I ask that the matter be continued until some other day. He is physically unable to testify, and I ask that Dr. Tisdale be called as a witness.

Mr. MADISON.—My examination in chief will be very brief, and then the cross-examination can be continued to some other day.

Mr. GEARY.—We will come here any day you want, but Mr. McKenzie is physically unable to testify to-day. I will ask the Commissioner to examine Dr. Tisdale as to the man's condition.

The COMMISSIONER.—Suppose we swear Mr. McKenzie, start in with the taking of the deposition, and see how he gets along? Then, if any reason appears to continue the examination, the matter can be then considered.

Mr. GEARY.—I will make a motion to continue the examination now. The order of the Court is that you shall continue it from day to day. I will show that this man is not in a condition to be examined now, and I ask to have Dr. Tisdale sworn.

Testimony of C. L. Tisdale.

Dr. C. L. Tisdale, having been duly sworn, testified as follows:

Mr. GEARY.—Q. You are the county physician of Alameda county? A. I am.

Q. You have been in attendance on Alexander McKenzie how long? A. Since he came here in February.

Q. You have met him how frequently since then?

A. Practically every day.

Q. State his present condition physically, Doctor.

A. He is in a very nervous condition. Mr. McKenzie has a dilated heart; a very weak heart. He is suffering at present from insomnia and nervous collapse, superinduced

(Testimony of C. L. Tisdale.)

by this condition of his heart—this dilated heart and weak heart.

Q. Doctor, in your opinion, what is his mental condition to-day?

A. His mental condition for the last week has not been good. He has not been clear in his mind for a number of days—uncertain. I should say that his mental condition was poor.

Q. How as to his memory? A. Poor.

Q. What is the cause of it?

A. His nervous condition, induced by confinement. He has failed a good deal in the last two or three weeks, I will say.

Q. Do you think he could, with safety, be subjected to an examination to-day as a witness?

A. I do not think so.

Q. What results might probably result from it?

A. Collapse.

Cross-Examination.

Mr. MADISON.—Q. Are you aware, Doctor, that yesterday Mr. McKenzie talked over the telephone to San Francisco on matters of business?

A. I am not aware of it, no. I saw him yesterday morning. I saw him twice the day before. I am not aware of anything of that kind.

Mr. McKENZIE.—I want to state to the gentlemen that that is true, I did. I had a boy come in here. I wanted to get Mr. Knight's firm name. I did not call him up. The boy called him up, and I got out of bed and went

(Testimony of C. L. Tisdale.)

to the 'phone and asked him about this money matter yesterday forenoon.

Mr. MADISON.—Q. Do you think, Doctor, that his condition is such that a few questions, say a dozen or more, would have any serious results upon him?

Mr. GEARY.—It would depend upon the questions.

A. I do not think, Mr. Madison, Mr. McKenzie is in a condition to do himself or the Court either any justice today. I think that is a fact. In the nervous mental condition he is in, as well as physical prostration, I would not want to take his testimony myself for anything practically in the way he has been in the last two or three days.

Mr. MADISON.—Q. You do not think a few questions would seriously interfere with his condition?

A. It might. No man can prophesy as to what might happen from anything. I simply state the facts as I know them from Mr. McKenzie's physical condition. I consider he is really in a serious, precarious condition, and has been so for a number of days. I have never seen a man go to pieces as McKenzie has in the last week. He has been in bed several days now. He eats nothing at all, so he tells me, and the jailer tells me. That I do not know of my own knowledge. I am told so around the jail. He does not sleep, except by giving him hypnotics, and then only sleeps half an hour at a time. The chief jailer tells me he is up and down all night The night before last, I believe it was, he told me he himself was up practically all night with McKenzie. He told me so in the morning

(Testimony of C. L. Tisdale.)

when I came in. He said he really was frightened, and he telephoned me this morning at half-past six, and wanted me to come over and see him in the condition he was in. He was frightened.

Q. A few questions, however, which would not affect his interest particularly, would not have any serious effect on his condition, would it?

A. As I say, no man can prophesy as to the outcome of anything. I simply state the condition he is in, believing it to be true, and leave it there. I do not know what the questions might be, of course. You can ask him how he feels, and what the weather is, but you know as well as I know, if a man is put on a strain, that it affects him as it would not to simply ask him a few simple questions that are of no importance to him or anyone else.

Mr. GEARY.—There is not any urgency about this examination. The return day is not until the middle of October, and no citations have been served yet.

Mr. MADISON.—There is urgency, because Mr. McKenzie is the only witness.

Mr. GEARY.—He will give any bond you want for his appearance in court on any day you want to examine him.

Mr. MADISON.—I should like to ask him a few questions at this time.

Mr. GEARY.—There is no rush about it. The writ tells the Commissioner that he may continue it from day to day. There is no return day until the 14th of October. We will give any bond for Mr. McKenzie's appearance any day you want him.

(Testimony of C. L. Tisdale.)

The COMMISSIONER.—The intimation of Mr. Madison is based on the testimony of the Doctor, not of the danger of Mr. McKenzie being able to testify if living, but that suffering with heart trouble, that he is the only witness to certain material facts. Therefore, he is pressing on account of that.

Mr. GEARY.—Yes, but the Doctor says he is not in a mental condition to testify, and he would not take his testimony. We will agree that Mr. McKenzie shall be present on any day that you want him.

Mr. MADISON.—I should like to ask him four or five questions anyway.

Mr. GEARY.—We will ask for a continuance, and ask to have a ruling upon that. We ask to have the matter continued until to-morrow at 2 o'clock.

Mr. MADISON.—I object to a continuance.

The COMMISSIONER.—What likelihood is there of his being any better to-morrow at 2 o'clock.

Mr. GEARY.—We will ask the Doctor about that, or the next day.

Q. Doctor, what is the prospect of any improvement in his condition?

A. I should say, Mr. Geary, that it will be several days before he is in a condition to really give any testimony that will be of value. It seems to me so.

Q. What do you mean "of value"?

A. Clear, concise testimony, that I would be willing to take, if I had any money up. His mental condition is

(Testimony of C. L. Tisdale.)

such—the talk I have had with Mr. McKenzie in the last two or three days has confirmed the opinion that Mr. McKenzie's mind is not clear.

Q. His testimony to-day would not be reliable?

A. No, sir, I should not take it. I do not know what you gentlemen want. I would not take it. I will say, Judge, in relation to this, that a month ago, in talking with Mr. McKenzie, as I have of course done, coming in here and seeing him every day, he could follow an argument. He could talk with you intelligently and concisely. He did not ramble and wander. The last two or thre days —the day before yesterday, and yesterday and to-day— he seems to have got wrought up into that nervous state that in talking to him he cannot follow the thread of an argument. You start to talk to him, and he is somewhere else in a minute, and he is gone. It is hard work to keep him on any line of argument at all. That is what I mean in reference to his testimony not being reliable and of value. His mind has not been clear. He has not been right in his head.

Mr. MADISON.—I will proceed and see how far we can go along.

Mr. GEARY.—You do not mean to say you are going to take that kind of testimony to prosecute anyone in a Federal court and try to convict anyone on the testimony of an incompetent witness. Let him get his senses back, and if he knows anything, he will tell it to you. He will not lie about it.

(Testimony of C. L. Tisdale.)

The COMMISSIONER.—Q. Doctor, I understand that, in your opinion, the asking and answering of four or five questions which might be put to him at this time will probably seriously endanger his health, resulting in a collapse or anything of that kind?

A. I could not go as far as that. I can simply say this, as I have just stated, that his mental condition is weak. I do not consider any testimony Mr. McKenzie would give at the present time to be reliable testimony. I would not take it, if it was my personal business. I do not know anything about what the business in hand is. I know nothing about the merits of it one way or the other, or what questions you propose to ask him, and have no interest in it one way or the other, but it strikes me that it is possible that certain questions which might be brought up here that might affect Mr. McKenzie or others, that you might ask, would be of that nature that would affect Mr. McKenzie seriously—the shock of those questions—and the attempt to answer them, and we might have, as we have had here, an attack of heart failure. That is the idea. I do not know that there will be, but that is my candid opinion.

The COMMISSIONER.—I think I will continue the matter until to-morrow at 2 o'clock, and suggest that the statements made here by the Doctor be reported to the Court to-morrow morning. They seem to cover the whole ground, as far as his physical condition is concerned, and the Court will then take such action, as it may deem proper in the premises. If it does not instruct me not

(Testimony of C. L. Tisdale.)

to proceed upon the same state of facts, I shall be here and proceed with the taking of the evidence. I think, in my position as a special Commissioner to take the testimony, that is the wisest course to pursue. It seems to me a serious question, based upon the Doctor's testimony. No one wishes to do anything that will endanger the physical condition of the witness. Superadded to that is the statement of the Doctor that his testimony would hardly be intelligent, and therefore not credible. I presume as to that the Court will be the best judge. I will continue this matter until to-morrow at 2 o'clock, and the statements made to-day will be reported to the Court to-morrow morning, for such action as it may deem proper, and unless the Court instructs me not to proceed with the taking of the deposition, we will continue the taking of the deposition to-morrow.

Mr. MADISON.—I understand that Mr. McKenzie will be here to-morrow at 2 o'clock?

Mr. GEARY.—If Mr. McKenzie is out of here to-morrow, we will give you his address, and he will be ready to attend at any time and place you want him.

The COMMISSIONER.—What question can there be about his being here?

Mr. McKENZIE.—If I get out of here, wherever I am, you can come to me.

The COMMISSIONER.—That is raising a new question.

(Testimony of C. L. Tisdale.)

Mr. GEARY.—He is not going to leave the State. You need not worry about that. You will have all the chance you want to examine him.

Mr. MADISON.—I have a subpoena in my pocket to subpoena him, in case he leaves here.

The COMMISSIONER.—Is there any question about that?

Mr. GEARY.—They expect him out to-night. I will give any bond for his appearance, at any time or place that may be named. We will probably ask bonds of your people to be here to testify for us.

The COMMISSIONER.—I will continue this matter until to-morrow, and in the meantime will report these proceedings to the Court.

United States of America,
Northern District of California. } ss.
City and County of San Francisco.

I hereby certify that in pursuance of the order of the Court made and entered in the above-entitled matter and cause, on the 23d day of May, 1901, I attended at the Alameda County Jail, at the hour of 2 o'clock P. M. of that day, when the foregoing proceedings took place.

All of which is respectively submitted.

E. H. HEACOCK,

United States Commissioner at San Francisco, and Commissioner Designated by the Court Aforesaid for the Purpose of Taking said Deposition.

[Endorsed]: Nos. 701, 702, 703. United States Circuit Court of Appeals, for the Ninth Circuit. In re Arthur H. Noyes. In re Thomas J. Geary. In re Joseph K. Wood. Transcript of Proceedings before Commissioner at Alameda County Jail. Filed May 24, 1901. F. D. Monckton, Clerk.

At a stated term, to wit, the October term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Thursday, the twenty-third day of May, in the year of our Lord one thousand nine hundred and one. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. } No. 703.

Order for Taking Deposition of Alexander McKenzie.

It is ordered that the order entered herein on the 22d instant, providing for the taking of the testimony of

Alexander McKenzie be, and the same is hereby, vacated and set aside.

Whereupon, upon motion of F. D. Madison, Esquire, amicus curiae, it is further ordered that the testimony of said Alexander McKenzie be taken herein before the Honorable E. H. Heacock, United States Commissioner, who is hereby expressly appointed to take the same, at the county jail of the county of Alameda, California, in the city of Oakland in said county and State, commencing this day, Thursday, the 23d day of May, 1901, at the hour of two (2) o'clock P. M. The taking of such testimony shall be continued from time to time until the same shall be concluded and sealed and returned to this Court, such return to be made immediately upon the close of the taking of such testimony.

I hereby certify that the foregoing is a full, true and correct copy of an original order made and entered in the within entitled matters.

Attest my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 23d day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

Stipulation as to Taking Deposition of Alexander McKenzie.

Friday, May 24, 1901.

It is stipulated and agreed between the respective counsel that instead of going to the Circuit Court of Appeals for a ruling as to the propriety of taking Alexander McKenzie's testimony, in consequence of his illness, that the deposition shall be proceeded with at the Alameda county jail on Saturday, May 25, 1901, at the hour of 10 o'clock A. M.

Deposition of Alexander McKenzie.

Saturday, May 25, 1901.

Alexander McKenzie, having been duly sworn, testified as follows:

Mr. MADISON.—Q. Your name is Alexander McKenzie? A. Yes, sir.

Q. Mr. McKenzie, on July 23, 1900, I believe you were appointed receiver in the case of Chipps vs. Lindeberg et al., pending in the District Court of Alaska, by Judge Noyes? A. Yes, sir.

Q. And also in the cases of Rogers vs. Kjellman, Melsing vs. Tornanses, Comptois vs. Anderson, and Webster vs. Nakkella? A. Yes, sir, that is so.

Q. Under that appointment I believe you were directed, as receiver, to work certain mining and placer claims near Nome, Alaska? A. Yes, sir.

Q. And you proceeded with and did work those claims, and extracted gold from the claims?

A. Yes, sir.

Q. On August 20, 1900, that is the date, I believe,

(Deposition of Alexander McKenzie.)

Judge Noyes, in each of those proceedings, I believe, directed you, as receiver, to deposit the gold-dust taken by you from each of those claims in the safe deposit vaults of the Alaska Banking and Safe Deposit Company.

A. I cannot tell you the exact date, but that is true.

Q. On or about that time? A. Yes, sir.

Q. You thereafter rented six or eight safe deposit boxes in the vaults of that company, and deposited such gold-dust, pursuant to the order of the Court, and on or about September 14, 1900, you had on deposit there, in those boxes, in the neighborhood of $180,000 or $200,000, did you not?

A. I took out more gold-dust than that.

Mr. GEARY.—The question is, how much you had in the boxes at that time.

Mr. MADISON.—Q. About the time that the writ of supersedeas arrived in Nome.

A. I guess that is right, if the record shows it.

Q. About that amount?

A. Yes, sir; I sold some, you know.

Q. On September 14, 1900, the writs of supersedeas issued by the Circuit Court of Appeals in each of those cases, I believe, reached Nome, and were served upon you, were they not? A. Yes, sir.

Q. There was a writ of supersedeas in the case of Chipps vs. Lindeberg, which was served at about 12 o'clock noon of that day; about noon time.

A. Can I ask you a question? Q. Yes.

(Deposition of Alexander McKenzie.)

A. You know there are two cases pending over me now. Am I testifying here against myself?

Q. No. I have no intention of using any of your testimony in any other case than the contempt proceedings instituted against Joseph K. Wood and Arthur H. Noyes.

A. You know there are four cases, and only two have been tried.

Q. I heard of that from Mr. Geary two days ago. I did not even know those cases had not been disposed of. A. Are they not pending over me now?

Q. I do not know. I was informed by Mr. Geary they were. I do not intend to use the testimony in either of those cases, if they are pending. As I say, it is only to be used in the cases against Joseph K. Wood and Arthur H. Noyes. A. Very well, go on.

Mr. GEARY.—Q. The question is now, if you did not receive the writ about noon time.

A. The writ of supersedeas came in on the 14th. It came about noon time; 12 or 1 o'clock, yes.

Mr. MADISON.—Q. Between 12 o'clock noon, or thereabouts, and 3 o'clock in the afternoon of the 14th of September, 1900, the writs of supersedeas issued by the Circuit Court of Appeals in all of those cases?

A. In the Comptois case and in the Chipps case, they were served on me along between 12 and 2 o'clock, not in the cases that I have been tried for and convicted. I have no memory when those papers were served on me. It was a long while after. I cannot on my oath

(Deposition of Alexander McKenzie.)

tell you. Those cases are disposed of and are out of the way, but my impression is those papers were not served on me that day at all, but in the Chipps case and the Comptois case they were served on me. Those are the two that are hanging over me, but in the ones disposed of, I have no recollection when that order was served on me. I think it was the next day. I would not be positive. It was not served on me at the same time.

Q. Now, I will ask you with respect to the service on you of the writs in the Chipps case and the Comptois case, how soon thereafter you talked with Judge Noyes, if you did talk to him?

A. I saw Judge Noyes Sunday. What date would that be?

Q. The 16th. Did you not see him on the 14th or the 15th?

A. No, sir, I did not. Sunday was the first time I saw Noyes; Sunday afternoon.

Q. Where did you see Judge Noyes?

A. He was sick. I saw him in his bedroom in the Golden Gate Hotel.

Q. Did you have any talk with him with respect to the service upon you of the writs, and the direction or order of the Circuit Court of Appeals therein contained?

A. I did.

Q. State what that conversation was.

A. I talked with him. There was some clean-ups came down from Discovery, and I told him the military

(Deposition of Alexander McKenzie.)

had taken possession of it, and I told him what I had done about turning over the money, stopping work under the advice of my counsel, and he stated he thought that was right, to shut down and discharge the men. I told him what I had done, and he approved of it. I asked him about the gold-dust. He said that Judge Morrow's order and the supersedeas issued by the clerk conflicted; that Morrow's order did not mention gold-dust, and that the clerk's supersedeas did. He said that there was a difference between Morrow's order and the clerk's order, and that he was investigating that or looking into it.

Q. Is that all he said?

A. That was all the conversation we had.

Q. Did he tell you that the writ of supersedeas was void?

A. I don't remember him using that language.

Q. When he said that the writ conflicted with the order, did he mean thereby that the writ was issued by the clerk without authority from Judge Morrow?

A. I could not say as to that. He stated that the language of the writ and the language of the order was different. That is the way I understood it.

Q. Did he say, therefore, that the writ was issued without authority?

A. He did not say that it was issued without authority to me.

Q. Did he advise you not to turn over the gold-dust?

A. No, sir, he said he was looking into it. I tell

(Deposition of Alexander McKenzie.)

you, I followed Mr. Geary's advice on this matter all the way through. I had not seen Noyes until after the thing was practically over.

Q. Did not Judge Noyes say at that interview that in his opinion the order appointing the receiver was not appealable?

A. We had no conversation about that at all at that time.

Q. How long did your conversation with Judge Noyes last upon that occasion?

A. I don't think it lasted five minutes; it was not over four or five minutes.

Q. Did the Judge direct you not to turn over the gold-dust?

A. He did not; that is, I don't remember him directing me not to turn over the gold-dust.

Q. In an answer filed by you in the matter of your own contempt in the case of Kjellman vs. Rodgers, there is stated therein, "That on the 15th day of September, Arthur H. Noyes, Judge of said District Court of Alaska, ordered and directed the United States marshal for the District of Alaska, Second Division, to take possession of the portions of said vault containing the gold and gold-dust held by this defendant as receiver, place a guard over it, and not to permit this defendant access to said vault." That is true, is it?

A. That is, the marshal told me so, but Noyes never told me anything about it. That is true; that is, that the marshal made that statement to me. When I came

(Deposition of Alexander McKenzie.)

to get into the vault, Dr. Whitehead told me that I could not get in.

Q. You mean Marshal Vawter? A. Yes, sir.

Q. When did Marshal Vawter tell you that?

A. I cannot exactly tell you.

Q. With relation to the time that you saw Judge Noyes on the 16th, do you remember whether it was before or after that time? A. It was after that time.

Q. After the 16th? A. Yes, sir, I know it was.

Q. Do you remember how long after the 16th?

A. I cannot tell you exactly.

Q. I will refresh your memory by stating that it is my understanding that on the 17th of September, Judge Noyes made an order staying further proceedings in these cases. Do you recollect whether it was after that order had been made by Judge Noyes that Marshal Vawter told you this?

A. Well, you see, the military took possession of the gold-dust or of the vaults, and after they took possession of the vaults, I did not pay any attention to it. I went in the vault on Sunday, the 16th.

Q. Did you see Marshal Vawter there?

A. No, sir, I did not see him there Sunday, but there were soldiers there, and they would not let me in, and Captain French, who was in charge of the soldiers, put the money in the vault and signed his name on the book. He signed a receipt for the money. They let French put the money into the box; it was a separate box, and they let him put it in there, but it was put in in my

(Deposition of Alexander McKenzie.)

name and his name, so that I could not get it out if I wanted to. That was Sunday about 4 or 5 o'clock, and it was after that that I saw Noyes and reported that to him. I told Noyes at the time what had happened.

Q. I have not got the date yet nor the time, as near as you can recollect, when Marshal Vawter told you that he had been ordered by Judge Noyes not to permit you access to the vault.

A. That was the first time that I had notice that I could not get into the vaults, when I went with that gold-dust. Whether Vawter told me before or after, I cannot tell you. There was so much fuss.

Q. What did Vawter say?

A. He said that Noyes had written him a letter to take charge of the gold-dust, I think, and not to let me or any one else in there. I believe that is what he said to me.

Q. Did he show you the letter?

A. I don't remember that he did.

Q. Did you ever see the letter?

A. I could not say that I did.

Q. Did you ever have any talk with Judge Noyes about the letter?

A. I never did; I never discussed it with him.

Q. It was because of that order or letter written by Judge Noyes that you did not comply with the writs of supersedeas served upon you, was it not?

Mr. GEARY.—You can decline to answer that, if you want to, if you think the answer would criminate you.

(Deposition of Alexander McKenzie.)

You can tell just why you did not comply with the writs, if you have any answer to give to it.

A. Well, the military had the gold-dust in their possession, and there was an order there, a stipulation as I understand it, by the defendants and the plaintiffs, that the gold-dust should be deposited in this vault, and that I could not get it without an order of the Court, and I never felt that I could at any time have gotten any of that gold-dust without an order of the Court, and I never took a dollar's worth of it without an order.

Q. You needed the consent of the defendants in the case before you could get the order?

A. Yes, sir; the defendants. The men were not paid, and we had to get a stipulation from the defendants and a stipulation from the plaintiffs, and an order from the Court, to get that gold-dust out. I could not have turned over the gold-dust at any time without having an order from that Court and a stipulation. That was the process we had to go through. Mr. Knight had to stipulate and Mr. Metson, and Hubbard and Beeman all stipulated that this money should come out, and then the Judge made an order. That was the process of getting it out. I never thought that I could at any time have got into the vault.

Q. You knew you could get the consent of the defendant to turn the money over to the defendant?

A. Yes, sir.

Q. Your only doubt was as to whether you could get the order of the Court?

(Deposition of Alexander McKenzie.)

A. The order of the Court, yes. I had to have an order of the Court before I could get that money, according to the previous arrangement.

Q. You did not think you could get the order of the Court after you got the consent of the defendant?

A. It appears Mr. Knight testified to that, that he asked the Court, and the Court declined.

Q. That was your belief, too, that the Court would decline although the defendant consented?

A. I had no means of having any opinion about it. Mr. Geary was attending to the legal end.

Q. You say you did not think you could get the gold-dust without such a stipulation and order? You knew you could get the stipulation?

A. I could get it from the defendants, but not from the plaintiffs. The plaintiffs objected.

Q. The only question in your mind then was the order of the Court?

A. The order of the Court and the plaintiffs. The defendants were willing all the time.

Q. Did you ever ask the plaintiffs?

A. Mr. Geary can answer that.

Q. Did you ever ask them?

A. There was talk about it, yes. They objected to my turning it over.

Q. That is, Messrs. Hubbard, Beeman & Hume?

A. Yes, sir, they objected to my turning over the money.

Q. Did Judge Noyes object also?

(Deposition of Alexander McKenzie.)

A. I never talked with Judge Noyes about it.

Q. Now, the deputy marshals, Mr. Monckton and Mr. Burnham, arrived in Nome, October 15, 1900, I believe, and you were taken into their custody about 9 o'clock of that morning, were you not?

A. Yes, sir.

Q. By these deputy marshals? A. Yes, sir.

Q. At that time where were the keys of the safe deposit boxes which contained the gold-dust taken by you as receiver from these claims?

A. They were in my possession.

Q. How many keys were there, about?

A. I had a private box of my own, and I had the keys of the safe deposit; that is where I had the gold-dust, and I had my pocket-book that I carried with notes and valuable papers. I had it all in my pocket, all together, you know; that is, I had receipts and checks and notes, and things of that kind, memorandums, and I had them in my pocket-book when I was arrested. If you will permit me, I will tell you the story.

Q. Very well.

A. Mr. Monckton and Mr. Burnham and Mr. Metson came in. Mr. Metson came into the room where I was at breakfast, and he sat down at the table. I was eating breakfast. He said there was a warrant for my arrest for contempt. I said, "All right, I will go out." After I had ate my breakfast, I went out and the marshal took me. I said I would go out and surrender peaceably. I went out and they took me down to Mr. Geary's office.

(Deposition of Alexander McKenzie.)

They started to read the warrant to me. I said I would waive the reading, and I would go to 'Frisco on my own account. They took me down to Mr. Geary's office and put me under arrest, and I had the keys in my pocket-book, and Joseph Wood came—

Q. (Interrupting.) That is Joseph K. Wood?

A. Yes, sir. (Continuing.) —and I handed him my pocket-book and all these keys, and my private key, and told him that I wished he would take possession of them and keep them for me, as I was afraid they were going to take me to jail, and I did not want them to get possession of my private papers, and my private affairs, and I turned them all over to him.

Q. What time of the day was that—what hour, if you recollect?

A. I could not tell you. I suppose, if I was arrested about 9 o'clock or 10 o'clock, that it must have been between 10 and 11; between 10 and 11.

Q. Now, when you left the hotel and went down to Mr. Geary's office, on your way you met Mr. Wood, did you not?

A. No, sir, I don't think I did. I don't believe I was permitted to talk to anyone.

Q. Did you not meet Mr. Wood, step aside and have a little consultation with him?

A. I did not, All the talk I had with Wood, I did on my own accord, because I had some papers that I did not want to fall into the hands of Vawter, if I was going to be put in jail up there. I called him and asked him if

(Deposition of Alexander McKenzie.)

he would take possession of the papers and the keys, and turned them over to him for safekeeping.

Q. You were the sworn officer of the court at that time, the receiver, and as such receiver, as the officer of the court, you had these keys of the safe deposit vaults in your possession, did you not?

A. I had the keys all the time.

Q. Now, as such sworn officer, how came you to surrender these keys to Mr. Wood without permission or consent of the Court appointing you?

A. I supposed he would do what was right by them. I supposed he would take possession of them. I did it for safekeeping. At that time I had no idea they were going to break into the bank at all; not the remotest idea.

Q. You knew that they could not open safe deposit boxes containing the gold-dust without the keys?

A. I did not know at that time they were going to break into the boxes or that they were going to take the gold-dust. I thought at that time that the gold-dust was going to remain there, as I was under the impression that the supersedeas was a stay of proceedings, and that until the final settlement of this case, it would remain there. That was my impression at the time. That is what I was advised by my counsel, and that is the impression I had in my mind. I did not know they were going to break into the boxes at that time. I had no means of knowing.

Q. Without breaking into the boxes, there was no

(Deposition of Alexander McKenzie.)

way of obtaining this gold-dust, except with these keys?

A. They did obtain it.

Q. I say, without breaking in?

A. No, sir, they could not have got it without breaking in.

Q. There was a master key, and these keys, and both keys had to go into the box at the same time?

A. There were two sets of keys. In fact, up there the safe deposit is not run like any other safe deposit that I ever saw. That is why I was so careful about those keys. In a safe deposit, when you go in you have to have a password. Whitehead never had a password in his safe deposit, and anybody who had a key could say, "I want to get into such and such a box," and he could have got it. There was no signature, no check of any kind. I was fearful all the time that these keys might fall into the hands of some person, and therefore I carried them on my person.

Q. Your understanding was the understanding of Mr. Wood, too, so far as you know?

A. What was that?

Q. Your understanding about the situation was the same understanding that Mr. Wood had, so far as you know?

A. I do not know what his understanding was.

Q. Now, did Mr. Burnham, the deputy marshal, in your presence, or Mr. Monckton, demand the keys of Mr. Wood that morning after you had delivered them to Mr. Wood? A. Let me tell you the story.

(Deposition of Alexander McKenzie.)

Q. If you will, please.

A. You are very kind. Mr. Monckton asked me if I had the keys. I said, "No." He said, "Who has got them"? I said, "Mr. Wood." Mr. Wood came out of the room, or passed through the room.

Q. At that moment?

A. Shortly afterwards. Shortly afterwards he passed through Mr. Monckton, I think, asked him if he had the keys, or requesed him to give him the keys, and Wood said, "I will see about that later," and passed right on and never stopped. I think it was Mr. Burnham who talked to him. That is the situation just as it was. It was either Burnham or Monckton, but my impression is he just passed right through and said, "I will see about that later."

Q. Do you recollect this conversation at that time: Mr. Burnham asked you for the keys. You said you did not have the keys; that you had turned them over to Mr. Wood, and about that time Mr. Wood came into the room, and Mr. Monckton said to him, "Mr. Wood, we understand that you have the keys to the boxes in the vaults that contain the gold-dust that has been deposited in those boxes to the credit of Mr. McKenzie, as receiver," and that Mr. Wood said he did not know whether he had the keys or not?

A. My impression is that Mr. Wood said, "I will see about that later." I don't think he denied having the keys.

Q. And then Mr. Monckton repeated the question,

(Deposition of Alexander McKenzie.)

and Mr. Wood said, "I do not understand anything about it." Then Mr. Monckton said to Mr. Wood that you had just told him that he, Mr. Wood, had the keys, and Mr. Monckton said that you had told him that you gave Wood the keys to the boxes, and Mr. Monckton then said, "I now make a demand for those keys," and you then said, "Yes, Mr. Wood, I told the marshal I had given you the keys, that I considered the keys were safer in your possession than in mine." And Mr. Wood said, "I do not know whether I have the keys or not," and said "I will see you later." Is that the substance of what took place there?

A. I do not think there was that much of a conversation, because Wood never lost a step in walking across the room. He just went right through the room. I know there was some feeling between him and Mr. Monckton. Wood answered him kind of short, and Burnham felt it, I know, at the time. I do not remember that there was so much said as what is in there.

Q. Now, Mr. Wood had had some conversation, or been in consultation with you and the marshal prior to that time in the room there?

A. It was in Mr. Geary's room. There was no conversation between us except what I have told you about handing him the keys.

Q. Were there not constant consultations between you and Mr. Geary and Mr. Wood and Judge Noyes that morning, between 10 o'clock and 12 or 1?

(Deposition of Alexander McKenzie.)

A. No, sir; Wood came in, as I told you. Mr. Geary I did talk with. I talked with Judge Geary.

Q. Was not Judge Noyes up there?

A. Judge Noyes came into the room that morning, came into Mr. Geary's room; but there was nothing discussed about this business. Mr. Geary, I think, was in the room.

Q. Nothing was said about this matter at all to Judge Noyes?

A. Not about the keys or the suit, as I remember.

Q. Or about this litigation at all?

A. It was about my arrest all the conversation was.

Q. Was he not asked at that time to issue a writ of habeas corpus?

A. Mr. Geary had got out a writ of habeas corpus, and, as I understood it, brought him up there for that purpose, and he declined to issue it. It was about my arrest. Judge Geary got out a writ of habeas corpus to get me out on a writ, and Judge Noyes came there and he looked at the papers, threw them down, and walked off and would not issue them. That is all that was talked about.

Mr. GEARY.—Q. The question all the way assumes that was in the morning. You say Noyes was there in the morning?

A. When I call it morning, it was after noontime. You know the time.

Q. Noyes was holding court that day. Metson's testimony shows that.

(Deposition of Alexander McKenzie.)

A. Whenever he came. I only saw him once.

Mr. MADISON.—Q. Do you recollect how long you were in the office? A. I was there all day.

Q. Except for luncheon?

A. I did not get out to lunch. I did not get any lunch. I was taken there in the morning, and kept there until after dark.

Q. It was some time during the day that Judge Noyes was there?

A. You see in that country we have no night. About the time of day, I may be mixed on that. It was some time during the day. I was of the impression it was about noon.

Mr GEARY.—Let me ask him a question to save cross-examining him.

Mr. MADISON.—Very well.

Mr. GEARY.—Q. You did not see Noyes yourself that day, did you? He did not speak to you in my room?

A. I did not talk to him about this case.

Q. You say you saw him up there. You saw him going into one of the other rooms?

A. Yes, sir.

Q. He did not talk with you?

A. No, sir; not about this case.

Q. At that meeting, Noyes came to the office. Don't you remember the writ was drawn up and had to be copied, and along in the afternoon you signed it, and Noyes stepped in on his way down to the court in the afternoon?

A. I don't know that.

(Deposition of Alexander McKenzie.)

Mr. MADISON.—Q. Those keys never were returned to you, were they? A. No, sir.

Q. So far as you know, they remained in the possession of Mr. Wood?

A. I think Wood came to me that evening—about the dates, I cannot be quite sure—and said Whitehead had been to him about the case, and he said, "If you have no objection, I will turn them over to him." I said, "I have none whatever," and, as far as I know, he turned them over to Mr. Whitehead, and the balance of my things he gave me, and that is after I was turned over to Vawter that evening or set free. The marshal took a receipt from Vawter for me.

Q. Now, if Judge Noyes stated to Mr. Knight, on the 15th of September—it was Sunday, you think it was, that you saw him? A. I know it was Sunday.

Q. If Judge Noyes stated to Mr. Knight, on the 15th day of September, that he had seen you and talked with you that day, there is a mistake, is there, on somebody's part?

A. It appears there must be, because I never saw Noyes from the time the writ of supersedeas came in, to talk with him, excepting Sunday afternoon.

Q. You went to his room?

A. I never went near him.

Q. You went to his room on Sunday?

A. I went to his room on Sunday, and no other time, from the time the writ of supersedeas came in until Sunday afternoon.

(Deposition of Alexander McKenzie.)

Q. You went to consult with him, to get his advice on what course of proceeding to adopt?

A. I went up there to know if I was doing what was right about turning over the moneys and keep within the law. He was very reticent, and did not give me much satisfaction. He told me about the order; that Judge Morrow's order and the supersedeas did conflict. I went off and saw Mr. Geary.

Q. He did not tell you that the order or the writ was void, did he?

A. He did not. He never said anything of the kind to me.

Q. Or that the order appointing you receiver was not an appealable order?

A. He never discussed that with me at all.

Q. Did he ever say to you that the action of the court down here was beyond the jurisdiction of the court at any time?

A. He never said anything to me about this court that I remember.

Q. Or any of the orders or writs that you received up there; did he ever express an opinion as to their validity?

A. He did not talk about these writs to me. He referred me to Geary this Sunday when I got through. He said, "See your attorney."

Q. Did he ever, at any time, in your hearing, to you or anyone, express an opinion with respect to this Court, or with respect to the validity of any of the writs or orders? A. He did not.

(Deposition of Alexander McKenzie.)

Q. Never in your hearing at any time?

A. No, sir.

Q. Did you not have a consultation with Mr. Archie Wheeler and Judge Noyes, when it was talked about getting the gold-dust out of the jurisdiction of the Circuit Court of Apeals?

A. No, sir, but I was fearful that the bank up there would be robbed, and I talked with Mr. Geary, and I talked with the Judge about having the gold-dust shipped out to some place, which he declined to do.

Mr. GEARY.—Q. You talked with Metson about it, too? A. I talked with Metson about it, too.

Mr. MADISON.—Q. Did you want to ship it to St. Paul?

A. St. Paul or Seattle, or any place to get it out of that country. I was told they were going to rob the bank. I was under $110,000 of bonds, and I was afraid if they broke into the bank and stole the money I would be held as receiver, and at the same time the money was not under my control. I talked with Mr. Geary about it. I talked with Mr. Metson about it. I talked with Whitehead about it. I told Whitehead I was told there was a plot on foot to rob the bank, which I was, and I wanted to see the money shipped out of that camp, because there were a lot of hard men there and I was afraid they would rob the bank. I did talk about that. Noyes declined to do it. He said he would not ship the money out of the jurisdiction of that court, so that matter ended.

(Deposition of Alexander McKenzie.)

Mr. GEARY.—Let me ask a question.

Q. Is it not a fact that on the 20th of August, when the order was made by Judge Noyes, directing you to hire boxes, that Metson and the attorneys for the defendants, themselves, at that time asked the Court to make an order shipping the dust out to some depository outside Alaska? A. That was my understanding.

Q. From that time on, the matter of shipping it out was being talked about between all of us interested in the matter? A. Yes, sir.

Q. And what depository we should select, whether San Francisco, Chicago, or Seattle. There were a number of depositories named. We did not know whether Seattle had a government depository or not at that time.

A. I suggested at one time St. Paul, and Noyes said no.

Q. The Court refused to make such an order for any of us, for the defendants or the receiver, and let the gold-dust stay where it was? A. That is so.

Mr. MADISON.—Q. Do you know when the letter that Marshal Vawter had, which you have already testified to, was written by Judge Noyes?

A. The date of it?

Q. Yes, the time when it was written.

A. I cannot tell you the exact date. It was along about the time that rumpus was on; along about that time. I cannot tell you the date.

Q. It is set up in the answer it was the 15th of September. That would be Saturday.

(Deposition of Alexander McKenzie.)

A. It would be about that time, I think. The dates, I cannot fix.

Q. In your answer it is alleged that before receiving the advice from your attorney, Judge Noyes, had made and issued that order to the United States marshal, and thereafter it was not within your power to comply with the order of this Court—that is, the writs of supersedeas?

A. I could not have done it without overcoming the military. They would not let me.

Q. On account of the instructions which they had received from Judge Noyes?

A. The military were there under the instructions of the marshal, and the marshal was there under the instructions of Judge Noyes, as I understand.

Q. When you first arrived in Nome, did you room with Mr. Wood? A. I did, yes.

Q. You had a room adjoining Judge Noyes', did you not?

A. We went to the Golden Gate Hotel, myself and Wood, yes.

Q. Was it not in your room that the orders appointing you receiver were signed?

A. No, sir, it was not.

Q. Were they not written there?

A. I cannot tell you. If they were, I was not there.

Q. Was it not in your room at the hotel that the judge made the order respecting your appointment as receiver?

(Deposition of Alexander McKenzie.)

A. I don't know a thing about it; I was not there.

Q. As far as your knowledge goes?

A. As far as my knowledge goes, I do not know where they were signed.

Q. You were not present at the time they were signed? A. I was not.

Q. I believe you testified, Mr. McKenzie, that between September 14th, at the time when the writs were served on you, and any time thereafter, you had no conversations, or that there were no conversations with Judge Noyes and yourself, or by Judge Noyes and anybody on your behalf, with respect to what you should do in regard to that gold-dust?

A. I had no conversation with anybody except my attorney here, and I took no one's advice but his. I had not seen Judge Noyes, and had not seen him from the time the supersedeas came in until Sunday afternoon. That I swear positively to.

Q. And after that time?

A. And after that time. I saw him Sunday, and I told you what happened. The next time I saw him was the day he was in Mr. Geary's office.

Q. Was that the time that the marshal arrived—

A. Now, wait.

Q. I was going to give you the date.

A. No, sir, I am wrong about that. They went over to St. Michaels after this—the Court did—the district attorney, the marshal and the Judge. This happened on Sunday that I saw him, and I think Monday they went over to St. Michaels. Was it Monday they went?

(Deposition of Alexander McKenzie.)

Mr. GEARY.—They went that week; I do not know what day.

A. They went to St. Michaels to hold the term of court.

Mr. MADISON.—Q. How long were they gone?

A. They were gone about a week. So there was no opportunity for me to see him, because he was not there.

Mr. GEARY.—I think they went over about Wednesday or Thursday of that week. He did not go Monday. He held court Monday.

The WITNESS.—Noyes was sick in bed.

Mr. GEARY.—They went over Wednesday or Thursday of that week, and came back the following Sunday.

The WITNESS.—It comes to my mind now. I know, while this row was going on, that Noyes left right in the middle of it. There was a good deal of excitement up there.

Mr. MADISON.—Q. After he came back, did you have any conversations with him?

A. About this matter?

Q. About any matter connected with this, or about the gold-dust, and about the writs of supersedeas?

A. No, sir, I never had but one conversation with him about this.

Q. You had other conversations with him about other matters?

A. I had very little to say to him, to tell you the truth, because I felt that he took the money out of my

(Deposition of Alexander McKenzie.)

possession, to be honest with you, when he issued that order taking it out of my possession and putting it into the marshal's, I felt that I did not have much more to do with it, and I had nothing to say to him. I never even discussed that with him.

Q. Did you not see him between September 16th and the conversation which you have referred to, and the subsequent conversation with respect to the habeas corpus?

Mr. GEARY.—He did not testify he had any conversation with him about the habeas corpus.

A. I did not talk to him about the writ; my attorney did.

Mr. MADISON.—Q. Between those dates did you have any conversation with him?

A. I do not think I did.

Mr. GEARY.—That petition for habeas corpus was to admit him to bail. Burnham and Monckton's order did not have any provision for bail, and I thought I would ask the Court to fix bail pending the departure of the steamer to take him out, which he refused to do.

Mr. MADISON.—Q. What conversations, if any, Mr. Geary may have had with him, you were not present at, if there were any such?

A. I never was present at a conversation between him and Geary that I remember of.

Q. Were any such conversations reported to you, or the substance of them?

(Deposition of Alexander McKenzie.)

A. I do not remember Geary having reported anything to me.

Q. Did you ever ask Judge Geary to see Judge Noyes in respect to the gold-dust or its custody, or anything regarding it?

A. I talked with Geary about my duties, of course; but I do not remember of ever having any such conversation with him.

Q. Did you speak to him with respect to the Court making any order such as it did make, as was contained in the letter to Marshal Vawter?

A. I never had any conversation with him about it. I knew nothing of that order until after it was made. I had no idea of it.

Q. You had no intimation it was going to be made?

A. No, sir, I never had any intimation.

Q. The first you knew of it was, you say, when you went to the bank to deposit some dust on Sunday?

A. I think Dr. Whitehead was the first man that told me I could not get in, and then I run it down and went to Vawter and wanted to know why I could not get in as receiver, and he told me. Marshal Vawter was the first man that communicated it to me; that is, that I knew positively, about the letter—Vawter told me. Whitehead told me I could not get in, and I wanted to know why. He said that the marshal had an order not to let me in. Then I went to the marshal, and the marshal told me that Judge Noyes had written him a letter requesting him not to let me or anyone else in there,

(Deposition of Alexander McKenzie.)

and I think that is the first time I ever knew anything about it.

Mr. MADISON.—That is all.

Mr. GEARY.—No questions.

ALEX. McKENZIE.

Subscribed and sworn to before me, at the Alameda County Jail, in Oakland, this 25th day of May, A. D. 1901.

E. H. HEACOCK,

United States Commissioner for the Northern District of California, at San Francisco.

Commissioner's Certificate to Deposition of Alexander McKenzie.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

I certify that in pursuance of the order of Court aforesaid, made and entered in the above-entitled matter and cause on Thursday, the 23d day of May, 1901, a certified copy of which order is hereunto prefixed, that on the 23d day of May, 1901, at 2 o'clock P. M., I attended at the Alameda county jail, in the county of Alameda, State of California, the place designated in said order as the place for taking the deposition of Alexander McKenzie, and in consequence of the illness of said witness, the taking of said deposition was continued until Friday, May 24, 1901, at the hour of 2 o'clock P. M., and thereafter was again

continued until Saturday, May 25, 1901, at the hour of 10 o'clock A. M.; that upon said Saturday, May 25, 1901, I again attended at the Alameda county jail, for the purpose of taking the deposition of said Alexander McKenzie, and F. D. Madison, Esq., appeared as amicus curiae in support of the order to show cause aforesaid, and Thomas J. Geary, Esq., appeared for the witness Alexander McKenzie; and the said Alexander McKenzie, being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by his deposition hereto annexed.

And I further certify that said deposition was then and there taken down in shorthand by Clement Bennett, a competent stenographer and disinterested person, under my personal supervision, and was afterwards put into typewriting, and after it had been so put into typewriting it was carefully read over by said witness, and sworn to and subscribed by him in my presence.

I further certify that I have retained the deposition in my possession, until I now seal the same and return it to the clerk of the court aforesaid for which it was taken.

In testimony whereof, I have herento set my hand at my office aforesaid, this 25th day of May, 1901.

E. H. HEACOCK,

United States Commissioner at San Francisco, and Commissioner Designated by the Court Aforesaid for the Purpose of Taking said Deposition.

At a stated term, to wit, the October term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the twentieth day of May, in the year of our Lord one thousand nine hundred and one. Present, the Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

In the Matter of
ARTHUR H. NOYES. } No. 701.

Order Referring to Commissioner to Take Testimony.

Upon motion of F. D. Madison, Esq., amicus curiae, it is ordered that the above-entitled matter be, and the same is hereby, referred to the Honorable E. H. Heacock, United States Commissioner, who is hereby expressly authorized to take the testimony of such persons as may be produced before him by respective counsel. Said testimony shall be taken at the Chambers of said Commissioner and the taking of such testimony shall continue until the same shall be sealed and returned to this Court, such return to be made immediately upon the close of the taking of said testimony

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled matter.

Attest my hand and the seal of said United States Cir-

cuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 20th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

At a stated term, to wit, the October term, A. D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the twentieth day of May, in the year of our Lord one thousand nine hundred and one. Present, the Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

In the matter of
THOMAS J. GEARY. No. 702.

Order Referring to Commissioner to Take Testimony.

Upon motion of F. D. Madison, Esq., amicus curiae, it is ordered that the above-entitled matter be, and the same is hereby, referred to the Honorable E. H. Heacock, United States Commissioner, who is hereby expressly authorized to take the testimony of such persons as may be produced before him by respective counsel. Said testimony shall be taken at the Chambers of said Commissioner and the taking of such testimony shall continue until the same shall be sealed and returned to this Court, such return to be made immediately upon the close of the taking of said testimony.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled matter.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 20th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

At a stated term, to wit, the October term, A D. 1900, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the twentieth day of May, in the year of our Lord one thousand nine hundred and one. Present, the Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Julge.

In the Matter of
JOSEPH K. WOOD. } No. 703.

Order Referring to Commissioner to Take Testimony.

Upon motion of F. D. Madison, Esquire, amicus curiae, it is ordered that the above-entitled matter be, and the same is hereby, referred to the Honorable E. H. Heacock, United States Commissioner, who is hereby expressly authorized to take the testimony of such persons as may be produced before him by respective counsel. Said testi-

mony shall be taken at the Chambers of said Commissioner, and the taking of such testimony shall continue until the same shall be sealed and returned to this Court, such return to be made immediately upon the close of the taking of said testimony.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled matter.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 20th day of May, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

[Ten Cents U. S. Int. Rev. Stamp. Canceled.]

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. } No. 703.

Deposition of Archie K. Wheeler.

Wednesday, May 29, 1901.

Before Hon. E. H. HEACOCK, United States Commissioner.

(Deposition of Archie K. Wheeler.)

Appearances:

F. D. MADISON, Esq., as Amicus Curiae in Support of the Order to Show Cause.

THOMAS J. GEARY, Esq., Appeared for Himself.

Archie K. Wheeler, having been duly sworn, testified as follows:

Mr. MADISON.—Q. Please state your name.

A. Archie K. Wheeler.

Q. Where is your residence?

A. My residence is Minneapolis, Minnesota.

Q. Have you been living in Minneapolis during all of last year, and are you living there at present?

A. I have made my home there, yes. That is my family residence.

Q. What is your occupation?

A. I am an attorney by occupation.

Q. Have you been acting as attorney during this year?

A. I have not practiced any law this year. What I mean is, I have not been in court.

Q. Have you an office?

A. No, sir, I have no office.

Q. How about last year?

A. I had no office. I have not been in any office since last June—the 25th, I think.

Q. The 25th of June, 1900?

A. Yes, sir. I wish to state that it was on that date that I left the employment I was in in Minneapolis—the office I was in—with Judge Noyes for Alaska. That is what I mean by saying I have not practiced any.

(Deposition of Archie K. Wheeler.)

Q. Did you go to Nome from there? A. Yes, sir.

Q. Did you practice law at Nome?

A. I did in a limited way, which, if you will allow me to explain, I shall.

Q. Yes, proceed with your explanation.

A. When I left Minneapolis with Judge Noyes, I went to act as his clerk. He told me that he could not say what salary or compensation he would be able to pay me until after he had conferred with the Department of Justice at Washington. I left with him on the proposition that if, after he had conferred with the Department at Washington, and the salary was fixed by the attorney general, if it was not suitable to me, I was going to practice my profession in Nome. If it was suitable, I was to accept and continue in his employment as his clerk.

Q. When you speak of "clerk," you mean his private clerk; not the clerk of the court?

A. Not the clerk of the court.

Q. His private clerk?

A. Yes, sir. Upon my arrival in Nome at that time, and until along in the latter part of September, my compensation had never been fixed by the attorney general. Certain parties came to me with cases, and I accepted them, filed the papers, where they were necessary, in the clerk's office, and immediately after my compensation was fixed by the attorney general and notice was received by Judge Noyes—

Q. (Interrupting.) When was that?

A. I would not be sure about the date, but I think the latter part of September. (Continuing:) I then was in-

(Deposition of Archie K. Wheeler.)

formed by Judge Noyes that I could not practice any more law if I accepted the position, and at the salary fixed by the attorney general, which I did. After that I practiced no law.

Q. Prior to that time, you had been acting as clerk of the court, had you? A. Not clerk of the court.

Q. Clerk of the Judge, I should say.

A. Doing such work as the Judge asked me to do, in the shape of writing instruments, and such work as that; clerical work in his office; looking up authorities.

Q. Your office was his office? A. Yes, sir.

Q. At the same time you were acting as attorney for anyone who employed you?

A. I was acting in so far as I filed the papers in the clerk's office. I never appeared before Judge Noyes but twice in court.

Q. You were employed to act as attorney—

Mr. GEARY.—(Interrupting.) Let him finish his answer.

A. I should like to explain, Mr. Madison, if you please.

Mr. MADISON.—Very well.

A. I never appeared in court before Judge Noyes but twice; I think that is all. Once I appeared as an accommodation for another attorney who was absent, and who asked me to appear just in a merely formal matter which came up before the Court. Another time I appeared for one of the receivers.

Q. Cameron?

A. Cameron, of the Topkok mine. And I would say,

(Deposition of Archie K. Wheeler.)

in that connection, that I never received a cent of compensation from any of them in any way, shape or manner, for anything I did for them. I drew papers for them and office work. I did considerable for them.

Q. The fact that you did not receive compensation was your misfortune, not by contract?

A. I had no contract whatever with them. They came to me as an officer of the court, presumably, and considered that they had the right to ask me.

Q. You did not agree to work as their attorney for nothing?

A. No, sir, I did not agree to act as their attorney for anything.

Q. You did act as their attorney?

A. I did, but I never asked for compensation.

Q. You expected to receive compensation?

A. No, sir, I never expected to get a cent of compensation. My second appearance was in connection with the Topkok receiver. Those were my only two appearances that I made in court at all.

Q. Did you not appear as attorney for Mr. Hansen, and accept employment from him?

A. I did not appear as attorney for Mr. Hansen.

Q. I do not care whether you appeared in court. Did you not act as his attorney? Did you not give him legal advice? A. Yes, sir, I gave him legal advice.

Q. That you did with a number of others, too, did you not? A. Yes, sir, I did.

Q. When you speak about appearing in court, it was simply that your cases did not come to trial?

(Deposition of Archie K. Wheeler.)

A. That I never did anything in court, except what the clients themselves might have done without an attorney.

Q. You advised clients?

A. I advised clients, yes, as to legal propositions, when they asked me.

Q. You did that all the time you were at Nome?

A. Yes, sir—no, I did not all the time; not after Judge Noyes told me that I could not practice law and hold my position, after my salary had been fixed.

Q. That was after the writs of supersedeas had been received at Nome?

A. No, sir, that was before that.

Q. The writs of supersedeas reached Nome September 14, 1900.

A. I think it was before those writs came that this occurred. I would not be certain, but I think it was.

Q. Are you a stenographer? A. Yes, sir.

Q. Can you write shorthand?

A. In a way, yes.

Q. What do you mean by "in a way"?

A. I am not an expert.

Q. Did you ever use it in your business?

A. Yes, sir, I have used it.

Q. Did you use it while you were acting as clerk for Judge Noyes? A. Yes, sir.

Q. Shorthand? A. Yes, sir.

Q. Do you know Alexander McKenzie?

A. Yes, sir.

(Deposition of Archie K. Wheeler.)

Q. Did you act for him in any capacity?

A. No, sir.

Q. Did you ever help him out in a friendly way?

A. Nothing, only I did typewriting for him of his accounts.

Q. What accounts were those?

A. The accounts in those cases which were in litigation, just before McKenzie came out from there. I did the typewriting of his accounts—made out all his accounts; that is, they were made out, handed to me, and I run them off on the typewriter. That is the only work I ever did for Mr. McKenzie.

Q. Did you advise Mr. McKenzie? A. No, sir.

Q. Ever gave him any legal advice?

A. No, sir, never.

Q. You did prepare his accounts in the Anvil Creek cases?

A. I did not prepare them. I wrote them off, after they were prepared on the typewriter.

Q. You prepared them for the Court?

A. I don't know who they were prepared for. I wrote them off with the typewriter after they were prepared. His clerk handed them to me.

Q. That you think was some time in October, 1900?

A. Yes, sir, that was in October.

Q. How long before he came out, do you remember?

A. It was while he was under arrest.

Q. That would be about October 15th.

A. Somewheres along there.

(Deposition of Archie K. Wheeler.)

Q. Do you remember or recall the arrival at Nome of the writs of supersedeas issued by the Circuit Court of Appeals in the Anvil Creek cases, which arrived there September 14, 1900?

A. I remember of the service of the writs or orders on Judge Noyes.

Q. That was, I believe, as a matter of fact, September 14, 1900? A. I think it was.

Q. Were you there at the time Judge Noyes was served?

A. No, sir; he sent for me immediately after he was served.

Q. Did he show them to you?

A. Yes, sir. He was sick in his room at the time.

Q. Sick in the room at the hotel at that time?

A. Yes, sir.

Q. What did he say with respect to them?

A. He handed the writs to me, and he said, "I think the practice is that I will have to make an order staying proceedings in those cases. If you will get some paper, I will try and dictate to you the order." I got the paper, and he did so dictate the order staying the proceedings in the cases at that time.

Q. What became of that order?

A. I took the notes as I had taken them over to the office, wrote it out on the typewriter—this was on Saturday—and after I had written it out, I brought it back to him, and it did not suit him.

Q. Why did it not suit him? What did he say?

(Deposition of Archie K. Wheeler.)

A. He said, after reading it over, that he thought it ought to be worded in the words of the order itself; that it should contain—

Mr. GEARY.—Q. (Interrupting.) What order itself?

A. The order served upon him, or the writs of this court, of the Circuit Court of Appeals. He said that it should contain or recite the words of the order, and that necessitated a change in the order. I took the writs back, or the order, at least, that he was making for the stay of proceedings—I took them back to the office, and Sunday the deputy clerk and I made the orders to conform to the wording of the order from the Circuit Court of Appeals, and Monday morning Judge Noyes, with some few changes again which were made in them, signed the orders and they were filed in the clerk's office.

Mr. MADISON.—Q. You say he sent for you on Saturday? A. I think it was Saturday.

Q. And dictated to you the form of the orders?

A. And dictated to me the form of the orders staying proceedings.

Q. And you took them to your office and wrote off such orders as he had dictated? A. Yes, sir.

Q. And you then took the orders to him on that same day, and they did not suit him, and he inserted or directed you to rewrite the orders containing the language of the writs which had been issued by the Circuit Court of Appeals? A. Yes, sir, that is right.

Q. Which you did on the same day, and handed them to him? A. No, sir, that was on Sunday.

(Deposition of Archie K. Wheeler.)

Q. On Sunday you did that? A. Yes, sir.

Q. And he signed them on Monday?

A. And he signed them on Monday. Monday was the first time he had been over to the office. He came to his chambers on Monday.

Q. Did he say anything to you, or did you hear him say to anyone, that the writ of supersedeas, or any of the writs of supersedeas, were void?

A. No, sir, he did not discuss them with me at all in any way, shape or manner.

Q. Did you hear him say that, I say?

A. No, sir.

Q. Not to anyone? A. Not to anyone.

Q. To anyone in your presence at any time?

A. No, sir.

Q. Did you hear him say that the order of Judge Morrow was void? A. No, sir, I did not.

Q. Did you hear him say, or did he say to you at any time, that any action of this court, any writs or processes of this court were beyond his jurisdiction or were void?

A. No, sir, he did not.

Q. Did you ever hear him discuss any action of Judge Morrow, or of this Circuit Court of Appeals, with anyone?

A. I never did; not in my presence or to me.

Q. You never heard him say one word about this court, did you? A. No, sir, I never did.

Q. You are sure about that?

A. Yes, sir, absolutely sure.

(Deposition of Archie K. Wheeler.)

Q. If it had taken place, you would have known it?

A. If it had taken place with me, I should certainly have known it.

Q. Or in your presence?

A. Or in my presence.

Q. You will swear nothing of that kind took place?

A. I will swear nothing of that kind took place. I will swear positively I never heard Judge Noyes discuss the orders of the court in any way, shape, or manner.

Q. Were you present on September 17, 1900, at a meeting at Nome, at which Judge Noyes and Mr. Geary and Mr. Hubbard were also present, wherein there was a general discussion respecting these orders, or the writs, or the action of the court, and after a long argument, the Judge finally said he would stay proceedings, and he would have the marshal up there arrest further proceedings in respect to the action of the court down here, and enforce his orders, or words to that effect?

A. No, sir. I was not. I will answer in this way: I was not present on that date, or any other date, at such a meeting, where a conversation of that nature took place.

Q. Were you present on September 16th, at a meeting between Judge Noyes and Mr. Geary—I do not know whether any others were present or not, but those two were present, and Judge Noyes then said that he considered that the writs of supersedeas were void?

A. No, sir, I never heard Judge Noyes say any such thing at any meeting.

Q. Or that the order appointing the receiver was an appealable order? A. No, sir.

(Deposition of Archie K. Wheeler.)

Q. You never heard Judge Noyes say, in his opinion—

A. (Interrupting.) I never heard him discuss it at all.

Q. (Continuing)—that the order appointing a receiver in those cases was appealable?

A. I never heard him discuss it, except when he gave it from the bench, when they asked for an appeal. I was present in court at that time. I think Judge Jackson asked for an appeal, and he said the order was not appealable. That was the only time I ever heard him express himself.

Q. Did this conversation take place between you and Judge Noyes on October 15th, or thereabouts, at Nome: That Judge Noyes said to you, "By God! I do hope McKinley is elected. I will fix those fellows"?

A. No, sir.

Q. Did you ever hear Judge Noyes say that Judge Morrow had been fooled, or was a fool, and had been imposed upon by parties in San Francisco?

A. No, sir, I never did.

Q. Or any words to that effect? A. No, sir.

Q. Do you know anything about an order or letter which was written by Judge Noyes on or about September 15, 1900, addressed to Marshal Vawter, with respect to the gold-dust in the safe deposit boxes of the Alaska Banking and Safe Deposit Company?

A. I remember such a letter being written, yes.

Q. Did you write it? A. Yes, sir.

Q. At whose request did you write it?

(Deposition of Archie K. Wheeler.)

A. Judge Noyes'.

Q. Did he dictate it to you? A. Yes, sir.

Q. Did he sign it? A. Yes, sir.

Q. Did you deliver it Marshal Vawter?

A. Yes, sir.

Q. What was the contents of the letter?

A. I cannot say positively what the contents of it was.

Q. As near as you can recollect.

A. To the best of my recollection at the present time—

Mr. GEARY.—Q. (Interrupting.) Where are your notes? Where is the copy?

A. That is at Nome, I suppose. I cannot testify about the contents of the letter.

Mr. MADISON.—Q. What is your best recollection upon the subject?

Mr. GEARY.—I object to his best recollection. If he has his notes, the notes ought to be produced. This matter does not come up until October, and he will have ample time to produce his notes. (Addressing the witness.) If you have not any positive recollection, you need not give it.

Mr. MADISON.—I submit the witness should answer the question, if your Honor please.

The COMMISSIONER.—I have no authority to rule upon the matter. The practice is that the objection goes of record, and the witness answers the question.

(Deposition of Archie K. Wheeler.)

Mr. GEARY.—He is their witness, and not our witness. The matter has been reduced to writing. He says he has his notes, and they are in a book. He ought to bring the book.

Mr. MADISON.—Q. State the best of your recollection upon the subject.

Mr. GEARY.—If you have a clear, positive recollection. If you have not, do not testify until you consult your notes, Mr. Wheeler.

Mr. MADISON.—I object to Mr. Geary telling the witness how he shall testify.

Mr. GEARY.—I have the same right to do it as I did in the other proceedings.

Mr. MADISON.—I submit the witness has a right to answer the question.

Mr. GEARY.—If he can give his full recollection, yes.

Mr. MADISON.—I have asked him for his best recollection.

Mr. GEARY.—The paper being the best evidence, and no testimony being given as to why the paper is not here, the question is improper, and I advise the witness he need not answer unless he wants to.

The WITNESS.—The only way I can answer the question is to give to the best of my recollection the substance of the letter.

Mr. MADISON.—Q. That is what I asked for.

A. The substance of the letter was a command to

(Deposition of Archie K. Wheeler.)

the marshal to preserve peace and order, and protect life and property in the town.

Q. That was all?

A. That was all; to the best of my recollection, that is what the letter contained.

Q. That is your best recollection upon the subject?

A. That is my best recollection upon the subject at the present time.

Q. You do not remember that it had anything to do with these cases? A. I do not.

Q. You have heard of these cases before, have you not, Mr. Wheeler?

A. Yes, sir. It was a general order, as I remember it now, to protect life and property, and preserve peace and order within the limits of the town.

Q. You have heard that Mr. McKenzie was receiver at Nome, I presume? A. Yes, sir.

Q. And that he was operating certain placer claims up there? A. Yes, sir.

Q. And had been appointed as such receiver by Judge Noyes? A. Yes, sir.

Q. And that he deposited gold-dust in the safe deposit boxes in the Alaska Banking and Safe Deposit Company? A. Yes, sir.

Q. And that certain appeals were taken in San Francisco from the orders appointing him receiver, and writs of supersedeas were issued by this court and arrived at Nome? A. Yes, sir.

Q. You have heard about those proceedings?

A. Yes, sir, I have.

(Deposition of Archie K. Wheeler.)

Q. This order that you speak about, that was written by Judge Noyes, at least dictated by Judge Noyes and written by you, was it written by you on a typewriter or in longhand? A. On the typewriter.

Q. A typewritten letter? A. Yes, sir.

Q. You are sure about that?

A. Yes, sir, I am, because I kept a copy of it.

Q. When was that written?

A. That was written, I think, either on Friday or Saturday afternoon, I would not be sure.

Q. That would be September 14th or 15th?

A. Yes, sir, I think it was written on one of those days.

Q. How long after it was written did you hand it to Marshal Vawter?

A. I immediately took it down and handed it to Marshal Vawter.

Q. Where was the Marshal at that time?

A. He was in his office.

Q. It had nothing whatever to do with—

A. (Interrupting.) Excuse me, I would not be positive whether the marshal was in his office or not, or whether I went from there over to the barracks. I know I went directly from his office to the barracks. I am not sure at which one of the two places I handed him the letter. I went immediately after writing it to his office.

Q. What was the marshal up there for at Nome, do you know?

(Deposition of Archie K. Wheeler.)

A. I presume he was there to fulfill the duties as United States marshal of that territory.

Q. Was not one of those duties the preserving of the peace and keeping of order?

A. Yes, sir, I presume so.

Q. Was it necessary for Judge Noyes to write him a letter to that effect?

A. I don't know anything about that.

Q. What is your opinion upon that subject?

A. How do you mean my "opinion"?

Q. You say all you recollect about this order is that Judge Noyes told the marshal to keep the peace in Nome?

A. I understood at the time there was very nearly a riot there.

Q. You thought it was necessary for Judge Noyes to write him a letter to that effect?

Mr. GEARY.—(Addressing the witness.) You need not answer that argument.

Mr. MADISON.—Will your Honor instruct the witness to answer?

The COMMISSIONER.—No. The practice is, if the witness refuses to answer, and counsel desires him to answer the question, to certify the matter to the Court.

Mr. MADISON.—I do not know whether the witness refuses to answer or not.

The WITNESS.—Just read the question, Mr. Reporter, please.

(Deposition of Archie K. Wheeler.)

(The reporter reads the previous question as follows: "You thought it was necessary for Judge Noyes to write him a letter to that effect"?)

The WITNESS.—I think I will decline to answer that, unless the Court insists.

The COMMISSIONER.—Q. You do refuse to answer? A. Yes, sir, I decline to answer.

Mr. MADISON.—Q. You have testified that you remember that Judge Noyes did, on or about September 15, 1900, address a letter or order to the marshal at Nome, with respect to the gold-dust taken by the receiver from the claims of which he had been appointed receiver and which he had worked, have you not?

A. I wish to state that this letter which was written by Judge Noyes, to the best of my recollection, did not contain anything in regard to any specific gold-dust, or any gold-dust. As I said before, I am not positive of the language of that letter. I did not fix it in my memory at the time I wrote it.

Q. Was not this the contents—maybe I can refresh your recollection—

Mr. GEARY.—(Interrupting.) If you have a copy of the letter, that is the best way to refresh his recollection.

Mr. MADISON.—Q. Have you a copy of that letter?

A. I have not here. There is a copy in Nome, in Judge Noyes' files.

Q. You say Judge Noyes did file the letter?

(Deposition of Archie K. Wheeler.)

A. I filed it away in his desk, as I did all the copies of letters.

Q. Not among the papers, though?

A. Not among the papers in the case, no. It was a personal letter. It was not in the form of a court order.

Mr. GEARY.—Have you a copy of it, Mr. Madison? If you have a copy of it, produce it.

Mr. MADISON.—Q. Did you take down—

Mr GEARY.—If you have a copy of it, Mr. Madison, I ask you to produce that copy and show it to the witness before you continue your examination any further. You can say you have or have not.

Mr. MADISON.—I have no copy.

The WITNESS.—The letter was in the nature of a personal letter; not a Court order; written upon Judge Noyes' private letter-head.

Mr. MADISON.—Q. Did it not direct the marshal not to allow Alexander McKenzie to have access to the boxes of the Alaska Banking and Safe Deposit Company, or any one else to go near those boxes?

A. I don't remember of Aleck McKenzie's name being mentioned in the letter at all.

Q. Did you see another letter written by Judge Noyes in longhand? A. Written by himself?

Q. Written by himself, directed to Marshal Vawter?

A. No, sir, I did not.

Q. Do you now of any other letter being written in longhand?

(Deposition of Archie K. Wheeler.)

A. Not that I know of. There might have been, but I don't know anything about it.

Q. Then, so far as you recollect, there was nothing in the letter which you have testified to which authorized the marshal to prevent Alexander McKenzie from going to his boxes in the safe deposit vault?

A. To the best of my recollection, there was not.

Q. You did not see the letter, if there was such a letter? A. I saw no other letter.

Q. Did you have any conversation with McKenzie between September 14th and October 15th, 1900?

A. I guess I did. I must have talked to him between that time.

Q. With respect to matters in these different suits?

A. The only talk I had with McKenzie was in regard to typewriting his accounts for him. He asked me if I would do that for him; if his clerk got them ready, if I would typewrite them. I told him I would, which I did.

Q. That was the only conversation you had with McKenzie?

A. That was the only conversation I had with McKenzie that I know of, except it might have been in a general way, just to meet him for a minute. I do not think between those dates I was with the man five minutes at any one time.

Q. Now, will you send us the copy of this letter—send it to the Commissioner?

A. I don't know whether I am at liberty to do that or not.

(Deposition of Archie K. Wheeler.)

Mr. GEARY.—He has not got the copy.

A. I have not got the copy. It is not my property.

Mr. GEARY.—It is filed with Judge Noyes' papers, he says.

The WITNESS.—It is in Judge Noyes' possession. It is in his possession, not mine.

Mr. GEARY.—I will promise you there shall be a copy produced before the 14th of October, unless the town of Nome is burned up and all the papers are destroyed.

Mr. MADISON.—Will you promise that for Judge Noyes?

Mr. GEARY.—No, for myself.

The WITNESS.—I could not promise. It is not my property.

Mr. GEARY.—All the papers in the case will be here before the 14th of October, in this court.

Mr. MADISON.—How can you promise it if you have no control over it?

Mr. GEARY.—I make the promise, and usually keep my promises. Of course, there is a possibility that everything may have been burned up there. The town may have burned down. We have not heard from there for three months.

Mr. MADISON.—Q. In respect to that order that you speak of, made on September 17th—

A. I think that was the date.

(Deposition of Archie K. Wheeler.)

Q. That was Monday, was it not? A. Yes, sir.

Q. Monday was the 17th of September, 1900?

A. I think it was the 17th.

Q. That was the day it was filed? A. Yes, sir.

Q. Do you remember the hour of the day it was filed?

A. I think it was filed in the afternoon some time, along about 3 or 4 o'clock.

Q. As to these writs, you say Judge Noyes sent for you on Friday. That would be the 15th. As a matter of fact, Judge Noyes was served on the 14th?

Mr. GEARY.—He said he was not sure whether it was the 14th or 15th.

A. I am not sure about the dates or days. I am not absolutely positive upon those things. I have no way of being positive.

Mr. MADISON.—Q. It was Friday that the Judge was served with the order? A. Yes, sir.

Mr. GEARY.—He says he is not certain whether it was Friday or Saturday that Judge Noyes sent for him. On Sunday he took the corrected order to the clerk's office.

Mr. MADISON.—Q. If it was served on Friday, it was Friday that he sent for you?

A. I presume it was.

Q. Don't you recall it was immediately after he was served?

A. I think it was a very short time after he was served with the papers that I went to his room.

(Deposition of Archie K. Wheeler.)

Q. It was three days after that before you wrote up this order staying proceedings, or rather, before it was filed? It was not filed until Monday?

A. It was not filed until Monday.

Q. If Marshal Vawter has testified under oath that he was directed by Judge Noyes not to allow McKenzie to have access to the vaults, to the gold-dust, taken by McKenzie from the placer claims, that is something you know nothing about?

A. I don't know anything about what Mr. Vawter has testified to or sworn to.

Q. I say, that fact you do not know anything about?

A. I do not know anything about it.

Q. You do not know that Mahshal Vawter was directed or ordered by the Court not to let McKenzie have access to that? A. No, sir, I do not.

Q. That is something entirely absent from your memory?

A. At the present time, I do not remember any such order that I was connected with in any way.

Q. Or direction? A. Or direction.

Q. Either friendly or judicial? A. No, sir.

Q. Or verbal or written?

A. No, sir. The only direction I know of is this letter which I have been testifying about.

Q. Directing him to keep the peace at Nome?

A. That is my recollection of the contents of the letter.

Q. Then, so far as you know, there was no action taken

(Deposition of Archie K. Wheeler.)

by Judge Noyes which prevented Alexander McKenzie from complying with the writs of supersedeas issued by this Court?

A. Not that I know of. I don't know anything about the cases in court. I mean after the writs came in there.

Q. You saw the writs, though?

A. Yes, sir, I saw the writs.

Q. There was no action taken by Judge Noyes which prevented Alexander McKenzie from complying with that writ? A. Not that I know of.

Q. Or any of those writs?

A. Not that I know of.

Q. You would have known it, if it had come through you?

A. Not unless it came through me—I would not have known it.

Q. You had charge of the Judge's papers, did you not, in his office? A. His private papers?

Q. No, the papers connected with the litigation.

A. They were kept in the clerk's office and filed.

Q. The matters under submissions and orders that he had in his desk, you had charge of those?

A. Yes, sir, I kept them together.

Q. Were you present at an interview between Judge Noyes and Alexander McKenzie on September 16th?

A. No, sir.

Q. Or any interview between Alexander McKenzie and Judge Noyes? A. No, sir.

(Deposition of Archie K. Wheeler.)

Q. Any interview between Judge Noyes and Mr. Geary? A. No, sir.

Q. At any time?

A. I have been present when Mr. Geary and Judge Noyes have been talking together.

Q. When was that?

A. All the summer. Several times I have been present.

Q. After September 14, 1900, I mean.

A. I presume there were times after that; there is no specific time that I can remember of at the present time.

Q. Any time when any conversation was had, or anything said by either of them with respect to this litigation?

A. I was never present when this litigation was discussed between Judge Noyes and Judge Geary, if it ever was discussed.

Q. You never heard either of them say anything about it? A. No, sir, I did not.

Q. Do you know anything about the order made by the Court in the case of Chipps vs. Lindeberg, on the 6th day of October, 1900? A. I do not remember it.

Q. Did you have any knowledge of the order that was made there? A. Not that I remember of now.

Q. Do you know whether or not on that date this order was made in that case: "Upon hearing the motion of the plaintiff for an injunction, and the affidavit thereto attached, and the complaint in the above-entitled

(Deposition of Archie K. Wheeler.)

cause, it is ordered that the defendants herein show cause before me at my chambers, in the Court Building, Steadman avenue, Nome, Alaska, on Monday, the 8th day of October A. D. 1900, at the hour of 9:30 o'clock A. M., why an injunction should not issue restraining you from the further working of the Discovery placer mining claim, Cape Nome Mining District, District of Alaska, and restraining you from deporting from the jurisdiction of this Court any gold-dust or gold taken out of the said Discovery placer mining claim on Anvil Creek, Cape Nome Mining District, District of Alaska," an order made in chambers on the 6th day of October, 1900? A. I do not remember.

Q. It was not dictated to you? A. No, sir.

Q. If it had been dictated to you, you would remember it?

A. The order would not be dictated to me, anyway. The attorneys all drew their own orders. It would not be prepared by me. It would be presented to him merely for signature.

Q. Do you remember on October 3, 1900, or thereabouts, that there was an argument between yourself and Judge Noyes, and some others, with respect to the sending of the money, or the gold-dust or gold, then in the safe deposit vaults of which we have been talking, away from Nome?

Mr. GEARY.—Mr. Wheeler, you have a right to ask him now what others. You have a right to ask all the persons present, so as to fix the time and place. He says

(Deposition of Archie K. Wheeler.)

"Judge Noyes and some others." You have a right to have him tell you all the others present, and to fix the time, place, room, and hour.

A. To my best memory at the present time, I never participated in such an argument with Judge Noyes or any one else.

Mr. GEARY.—If he knows who else was present, he should tell you so. He should tell you the room, the place, what part of the town it was in, and the hour, so as not to be led into a trap. You have a right to ask him who else was present if you want to do it, for your own protection. I give you that as amicus curiae.

The WITNESS.—I will ask you who was present besides Judge Noyes and myself

Mr. MADISON.—Q. At any time when any one was present.

Mr. GEARY.—(Addressing the witness.) You need not answer that, unless he tells you the time and place and persons present. You can decline to answer unless he does that.

A. I shall decline to answer the question.

Mr. GEARY.—Ask him for full information.

Mr. MADISON.—Q. Did you ever hear Judge Noyes say, at that time, on or about October 3, 1900, in your presence, to you, or anyone else, that it would be advisable to send the gold or gold-dust held by McKenzie, as receiver, away from Nome?

A. No, sir, I never did.

(Deposition of Archie K. Wheeler.)

Q. You did not suggest, upon that occasion or any other, that it would be advisable to send it to St. Paul or Chicago? A. No, sir.

Mr. GEARY.—I would not answer the question unless he tells you who the other is. They might have some stalking witness who might come in and say he was present. I should be a little slow, if I were you, in answering, unless he informs you of these things.

Mr. MADISON.—Q. Do you remember about that time Judge Noyes had a talk with General Randall with respect to Judge Morrow, and said he believed Judge Morrow had been imposed upon or he would not have made these orders, if he had known of the circumstances? A. Was I supposed to be present at that?

Q. Yes, you were present, I understand.

A. No, sir.

Mr. GEARY.—Do you contend I was present, Mr. Madison, at any of those meetings with General Randall or any other people? Have any of your informants so advised you?

Mr. MADISON.—I am not under examination.

Mr. GEARY.—I will have you on before we get through with the case.

Mr. MADISON.—I am ready whenever you do.

Mr. GEARY.—I ask you now, for the purpose of examining this witness. I do not care to bother my head about anything that is not necessary.

(Deposition of Archie K. Wheeler.)

Mr. MADISON.—I will say I am not taking this testimony to be used as against you.

Mr. GEARY.—I ask now if there is any claim made that I was present at a conversation between General Randall or anybody else at any of the times referred to in the examination of Mr. Wheeler, where the matter of removing gold-dust was discussed. I ask the attorney now to advise me if he claims I was present at any such conversation.

Mr. MADISON.—I wil say, in reply to that, that I do not intend to use any part of the testimony in the matter of the contempt proceedings against Thomas J. Geary.

Cross-Examination.

Mr. GEARY.—Q. You said that Noyes told you you could not practice. Was that on your second appearance in his court?

A. Immediately after my second appearance.

Q. That is the time that you appeared for Cameron?

A. Yes, sir.

Q. You never before that had appeared in Judge Noyes' court as an attorney, except on the occasion when you appeared to represent some other attorney by request?

A. Just as an accommodation, and by request of some other attorney.

Q. On your next appearance, Noyes advised you you could not practice in his court? A. Yes, sir.

Q. Did you practice after that in his court?

(Deposition of Archie K. Wheeler.)

A. No, sir; the cases in which I appeared as attorney were transferred, and another attorney substituted on the record.

Q. That happened as soon as your compensation was fixed and you became the regular clerk of Judge Noyes?

A. Yes, sir, right after that time.

Q. You started to say something about why the Vawter letter was written, that there was a riot, when Mr. Madison cut you off with another question. Why was the Vawter letter written?

A. The conditions at that time were very peculiar at Nome. McKenzie was in possession of the gold-dust—that is, had it deposited in the bank, in the boxes, as I understood it, under order of the Court, and the defendants wanted him to turn it over after the service of those writs and papers upon him. It appears that McKenzie did not turn it over and the defendants had threatened to break open the vaults and take the gold-dust. This news was communicated to Judge Noyes.

Q. By whom?

A. I cannot say at present, because he was in his room at the time sick when this news was brought to him. He sent for me, and dictated this letter to Marshal Vawter, and the one to Major Van Arsdale; both of the same tenor, as I remember now.

Q. And because at that time, from the information he had received, he apprehended there was going to be a riot at the bank? A. Yes, sir.

Q. So he sent these letters to Marshal Vawter and to

(Deposition of Archie K. Wheeler.)

the Commander of the United States troops, asking them to preserve peace? A. Yes, sir.

Q. What was the result of his writing those letters?

A. The result was, as I understood it, that the military authorities put a guard in control of the bank.

Q. Immediately after the receipt of the letter which you took to Van Arsdale? A. Yes, sir.

Q. You are not certain whether that was Friday or Saturday? A. I am not.

Q. That is the only letter that you know of?

A. That is the only letter that I know of.

Q. Whether he afterwards wrote an additional letter to Van Arsdale directing him to take charge of the dust, you do not now know?

A. No, sir, I do not.

Q. He might have written that without your knowledge? A. Yes, sir.

Q. You are not prepared to contradict the testimony of Marshal Vawter that he received such a letter?

A. I am not.

Q. Or the testimony of Dr. Whitehead that he read such a letter? A. I am not.

Q. And was governed by it?

A. No, sir, I am not.

Q. Monday was the first day of court up there, Monday, August, the 17th. There was not any court on Friday or Saturday? A. No, sir.

Q. Friday, Saturday and Sunday, Judge Noyes was sick in his room at the hotel? A. Yes, sir.

(Deposition of Archie K. Wheeler.)

Q. The first time he appeared in court was Monday, the 17th? A. Yes, sir.

Q. This order, you think, was made some time in the afternoon of that day?

A. Yes, sir, I think it was made that day, in the afternoon, and filed.

Q. Mr. Madison asked you where your home was. You say Minneapolis?

A. Minneapolis, Minnesota.

Q. And you left there with Judge Noyes to go to Nome? A. Yes, sir.

Q. Do you know the date you left?

A. I left there on the 25th day of June.

Q. 1900? A. Yes, sir.

Q. Judge Noyes accompanied you? A. Yes, sir.

Q. Who else was in the party?

A. Judge Noyes, his wife, and myself, and Charlie Dickey and his wife.

Q. What road did you travel over to Seattle?

A. The Great Northern.

Q. You traveled over the Great Northern to Seattle? A. Yes, sir.

Q. Did Alexander McKenzie accompany you?

A. No, sir, he did not.

Q. When did you first meet McKenzie?

A. About the 2d or 3d of July.

Q. About the 2d or 3d of July?

A. Somewhere along the first part of July.

Q. Where did you first meet him?

(Deposition of Archie K. Wheeler.)

A. In the office of the Butler Hotel.

Q. Seattle? A. Yes, sir.

Q. Had you ever met Alexander McKenzie before that in your life? A. I never had.

Q. What was your intention when you and Judge Noyes and his wife left Minneapolis for Seattle, as to your movements after you reached Seattle, if you know?

A. Judge Noyes had been informed that the revenue cutter "McCullough" was to be at Seattle to take him and his party to Nome, and Judge Wickersham and his party to Sitka.

Q. What do you mean by "Judge Noyes and his party, and Judge Wickersham and his party"?

A. I mean the clerks of the court. Judge Noyes told me in Minneapolis they were going to Sitka, and there meet Judge Brown, and the three Judges would hold a meeting and divide the territory; but after we arrived at Seattle, he could not get any trace of where the "McCullough" was.

Q. What inquiries did you make about the "McCullough"?

A. I did not make any myself, but I asked Judge Noyes several times, and he had made inquiries, and he said he was unable to find out anything about where she was and when she would return. We waited there twelve days for her before we sailed.

Q. That is, you and Judges Noyes, and his clerk, and the marshal? A. And Dickie.

Q. Judge Wickersham and his party?

(Deposition of Archie K. Wheeler.)

A. And Judge Wickersham and his party. They took another boat. Judge Wickersham got tired of waiting, and took another boat to southeastern Alaska.

Q. A Government boat?

A. No, sir, a regular steamboat.

Q. He gave up waiting for her?

A. He gave up waiting for her.

Q. Were you present at any conversation between Wickersham and Noyes when the matter of how to get to their respective places was discussed?

A. I was not.

Q. Did you hear any order that Judge Noyes received from the Department of Justice as to his going to Nome?

A. No, sir, I don't know whether he received any order from the department.

Q. When you and Judge Noyes left Minneapolis, it was not your intention to go to Nome with Alexander McKenzie?

A. I did not know him, not even by name, when I left Minneapolis.

Q. Was there any agreement or understanding that you know of at that time, that Alexander McKenzie should accompany Judge Noyes to Nome on the steamer "McCullough"?

A. No, sir, I never had spoken to Judge Noyes about McKenzie, nor he to me. I did not know the man.

Q. How did you come to take the steamer "Senator," you and Judge Noyes and the court party?

A. We were in Seattle twelve days, and there was no

(Deposition of Archie K. Wheeler.)

word received from the "McCullough," and Judge Noyes said he would take the "Senator."

Q. That was a regular passenger boat?

A. That was a regular passenger boat, and we went down and looked it over, and the Captain pointed out the accommodations for us.

Q. Was McKenzie with you when you secured accommodations?

A. No, sir; I went after my own. I do not know anything about the rest of them.

Q. There was not any concert between you, Judge Noyes and McKenzie as to securing accommodations on board the "Senator"?

A. No, sir; I went down and got my own ticket alone, without any other person. I don't know anything about the rest, when they got theirs.

Q. Was not the fact of you and Judge Noyes and the court party going on the "Senator" because of the failure of the Government transport "McCullough" to appear to take your party and the other party to Sitka?

A. Yes, sir, that was the reason.

Q. And not because of any arrangement between McKenzie and Noyes that they should journey together to Nome?

A. No, sir. I further understood last summer, while we were at St. Michaels, that the officers of the "McCullough" were expecting to take us from Seattle to Nome.

Q. Were you aboard the "McCullough" last summer at St. Michaels?

(Deposition of Archie K. Wheeler.)

A. No, sir, I was not. She was in the harbor, and the officers were ashore.

Q. Did you meet the officers?

A. No, sir, I did not.

Q. But you learned it was their intention to have picked the party up? A. Yes, sir.

Q. You are positive that McKenzie and Noyes did not travel together over the Great Northern from Minneapolis?

A. I am positive of it.

Q. You never met McKenzie until you met him at Seattle?

A. No, sir; about five days after I landed there.

Q. At Seattle? A. Yes, sir.

Redirect Examination.

Mr. MADISON.—Q. Was McKenzie as much a stranger to Judge Noyes as he was to you?

A. I don't know anything about it. In explanation of that, Mr. Madison, I will say, at that time I had lived less than two years in Minneapolis. My home is Michigan, so I did not live in Minnesota, even to hear of Aleck McKenzie in a political way. That explains my ignorance of Aleck McKenzie, or knowing anything about him.

Q. You do not know whether Judge Noyes knew him or not?

A. I do not. I knew Judges Noyes just about the same length of time I had been in Minneapolis, because I met him when I came there to live.

Q. As a matter of fact, Judge Noyes, McKenzie and

(Deposition of Archie K. Wheeler.)

Mr. Hubbard did go to Nome together on the same steamer? A. We all went on the same steamer.

Q. Are you going back to Nome now?

A. I expected to.

Mr. GEARY.—You need not answer that unless you want to.

Mr. MADISON.—Q. Are you going back to Nome now? A. I expected to.

Q. Are you still a clerk of Judge Noyes?

A. I don't know. I think I will decline to answer that question, if you wish to certify it to the Court.

Q. Why do you decline to answer that?

A. Just merely because I decline to answer it.

Mr. GEARY.—That is not any matter in regard to the citation against Judge Noyes.

Mr. MADISON.—I will certainly ask the Commissioner to certify that question to the Court, and take it up on Monday.

Mr. GEARY.—The Court meets on Friday. That is a matter I do not advise the witness not to answer.

Mr. MADISON.—I will ask this further question:

Q. I would like to ask you a line of questions to find out whether you are going to Nome, whether you are still the clerk of Judge Noyes, and whether you are going there to act as clerk; whether you expect to go there and act as clerk for Judge Noyes or not.

A. I can possibly answer those questions without burdening the record very much.

(Deposition of Archie K. Wheeler.)

Q. Answer the first question, then.

A. What is the first question?

Q. Are you still a clerk of Judge Noyes?

A. I never resigned my position with Judge Noyes, if a resignation was necessary. I am going back to Nome if I can get there, but expect to go to work for myself. I am going there with that intention.

Q. Is it your understanding that you are still in the employ of Judge Noyes?

A. I was paid when I left Nome, and paid all that was coming to me.

Q. Have you a claim now for any compensation?

A. I do not know whether I have or not.

Q. You have not resigned or been discharged?

A. I have not resigned or been discharged; no.

Q. Therefore, you are still the clerk of Judge Noyes?

A. Presumably. I have never resigned; never handed in any resignation; never been discharged.

Q. Do you intend to resign as soon as you reach Nome?

A. I don't know. I may never resign.

Q. You are going back there to fill the position?

A. I will not say yes to that. I am going back there, and expect to work for myself, not for Judge Noyes.

Q. And also as clerk before Judge Noyes?

A. No, sir, I don't expect to clerk for Judge Noyes.

Q. You do not expect to resign, then?

A. I did not suppose it was necessary, if I did not go to work for him.

(Deposition of Archie K. Wheeler.)

Q. I do not exactly understand what you mean. You may.

A. I mean I am going back to Nome in my own interest.

Q. Not as a clerk?

A. Not as a clerk of Judge Noyes. I cannot make it any plainer than that.

Q. You spoke about a riot having taken place at the bank. Were you present at that time?

A. There was no riot took place.

Q. What was referred to, then, was simply some reports of hearsay testimony; some reports you heard about it? A. Yes, sir; that is all.

Q. You say the news of this riot was brought to Judge Noyes. Were you present at the time the news was brought to Judge Noyes?

A. I was never present when any news of a riot was brought to Judge Noyes. There was no riot. I think, if I am not mistaken, word was brought to Judge Noyes that the two factions were practically on the verge of a riot, in regard to the gold-dust at the bank.

Q. Were you present at that time?

A. I will not say I was.

Q. You do not recollect of any person giving that message, or telling Judge Noyes anything to that effect?

A. It runs in my mind I was in the room when some person was talking about it. I cannot recall who it was.

Q. You cannot recall the situation at that time, in order to tell who was there and what was said?

A. No, sir, except in a general way.

(Deposition of Archie K. Wheeler.)

Q. You say that Judge Noyes feared there would be a riot. You cannot tell that?

A. I cannot tell what Judge Noyes feared.

Mr. GEARY.—I wish it to appear upon the record that I do not appear for Noyes or Wood in any of these proceedings.

ARCHIE K. WHEELER.

Subscribed and sworn to before me this 31st day of May, 1901.

E. H. HEACOCK,

United States Commissioner, for the Northern District of California, at San Francisco.

(The further taking of testimony in these matters is postponed, at the request of the amicus curiae, until Monday, June, 1901, at 10 o'clock A. M.)

Deposition of O. P. Hubbard.

Monday, June 3, 1901.

O. P. Hubbard, having been duly sworn in all three cases, testified as follows:

The WITNESS.—I desire to say, I do not desire to testify in the matter of the contempt proceedings against Judge Thomas J. Geary, for the reason that I was not subpoenaed to testify in that case, and, having seen Judge Geary after the subpoena was served on me, I told him that I had not been subpoenaed to testify in his case, and I would not want to testify now without his either being

present or being notified that I was called upon to testify in his matter.

Mr. MADISON.—I have no intention of examining the witness in respect to the proceedings against Thomas J. Geary, but only in the matters of Judge Arthur H. Noyes and Joseph K. Wood, although the witness is sworn in all three of the cases.

Q. State your name, age, residence and occupation.

A. My name is O. P. Hubbard; residence, I suppose Nome; age, 43; occupation, practicing attorney.

Q. Were your residence and profession the same during the months of July, August, September and October, 1900? A. Yes.

Q. Were you a member of any firm?

A. Yes, sir.

Q. What was the name of the firm?

A. Hubbard, Beeman & Hume.

Q. Is that firm still in existence? A. Yes, sir.

Q. You were the senior member of the firm of Hubbard, Beeman & Hume, and as a member of that firm practiced your profession as an attorney at Nome, Alaska, during July, August, September and October of the year, 1900; is that correct?

A. Yes, sir. I did not reach Nome, though, until the 19th of July, I think it was. I was not there during the entire month of July.

Q. Were you at Nome during all of the time after the 19th of July, until the 15th day of October, 1900?

A. Yes, sir.

(Deposition of O. P. Hubbard.)

Q. Were you the attorney for the plaintiff in the case of Chipps and Others vs. Lindeberg? A. Yes, sir.

Q. And also in the cases of Rodgers vs. Kjellman, Melsing vs. Tornanses, Comptois vs. Anderson, and Webster vs. Nakkella?

A. Yes, sir, we were attorneys for those parties, but the original suits in Rodgers vs. Kjellman and Webster vs. Nakkella were started by Mr. Hume before the partnership was formed. I do not know I can say that the partnership went into effect until I reached Nome.

Q. Which was the 19th of July?

A. Yes, sir. Mr. Hume had been practicing there the year before on his own account, and Mr. Beeman and I had been practicing together.

Q. Were any of those cases pending on the 19th of July?

A. Yes, sir, some of them were; that is my understanding, that all of them were except Chipps vs. Lindeberg.

Q. There were orders appointing receivers in each one of those cases made on the 23d of July, 1900, were there not?

A. I am not certain about Webster vs. Nakkela.

Q. With that exception?

A. I think with that exception; that is correct.

Q. In each instance, Alexander McKenzie was appointed receiver, was he not?

A. Yes, sir, that is my understanding; I think that is correct. The record shows that.

Q. By whom were the orders signed appointing Alexander McKenzie receiver?

(Deposition of O. P. Hubbard.)

A. I take it, they were signed by Judge Noyes. The orders made would show. I do not desire to testify to the records of the court up there. That is my understanding.

Q. Did you arrive in Nome on the 19th of July?

A. It was either the 18th or 19th, I think.

Q. Did you arrive there with Judge Noyes?

A. He was on the same boat that I went up on.

Q. And Alexander McKenzie also?

A. Yes, sir; they were both on the same boat.

Q. You three went on the same boat and arrived together?

A. Yes, sir; arriving on the same day, of course.

Q. You were all friendly and acquainted with one another?

A. I do not know that I can say that. I do not think I had spoken to Judge Noyes more than two or three times; just simply passed him on the boat and spoke to him.

Q. You were not unfriendly with him?

A. No, sir, but I could not say I was friendy with a man I had so slight an acquaintance with as I had with him. I certainly did not have any unfriendly feeling towards him, or anything of that kind.

Q. You were friendly with Alexander McKenzie?

A. Yes, sir.

Q. You knew him very well?

A. Yes, sir, I had known Alexander McKenzie for some months prior to going to Nome.

(Deposition of O. P. Hubbard.)

Q. You had had business transactions with him?

A. Yes, sir.

Q. Acted as his attorney?

A. I acted as attorney in matters in which he was interested; yes.

Q. How soon after your arrival at Nome was application made to Judge Noyes in these four cases of which we have spoken, for the appointment of a receiver?

A. I would not be certain as to the number of days. It was shortly after he arrived there that the applications were made, but as they were presented by Mr. Hume, and I was not in court at the time—in fact, at no time when the matter was presented to the court—I could only give you an approximate answer as to the matter.

Q. Did you see the orders before or after they were signed?

A. I think I must have seen them after they were signed. They were a matter of record there, and I frequently saw the files in each case.

Q. Did you see them before they were signed?

A. I do not recall that I did. My impression is that Mr. Hume drew the orders, and the chances are that I did not see them.

Q. Did you speak to Judge Noyes respecting the orders or respecting the appointment of a receiver?

A. No, sir, never at any time; in fact, I don't think I saw Judge Noyes after he came ashore, until he went to St. Michaels, unless it was on the street.

(Deposition of O. P. Hubbard.)

Q. When did he go to St. Michaels?

A. I do not think he was there more than a week before he went over to St. Michaels.

Q. Do you remember when he arrived at Nome?

A. I think we went into the harbor there, or landing, on the 18th or 19th; it may have been a day earlier than that, but I would not be positive as to the exact date.

Q. From the time you went ashore, for a week after that time, which would carry it over to the 25th or 26th of July, did you see Judge Noyes at all?

A. I do not recall that I saw him. If I did, it must have been on the street passing. I was not before him in any matter, and I did not go to his room.

Q. You did not speak to him?

A. I do not think so. I cannot recall any occasion when I spoke to him. I left the boat immediately upon our arriving at Nome—went ashore in a small boat before they landed the passengers. Judge Noyes came ashore. I did not see him come ashore. I do not think I anything more than saw him on the street, if that, until after he came back from St. Michaels.

Q. At the time you went ashore, did you have in mind any proceedings, or have in contemplation any proceedings, looking to the appointment of a receiver in any of these cases?

A. It had been our intention to ask for receivers in contested litigation.

Q. You say "our." Who do you mean?

A. My partner, Mr. Beaman, was in there during the

(Deposition of O. P. Hubbard.)

entire winter; he stayed over. Mr. Hume went into Alaska probably a month ahead of me, maybe six weeks. It was our intention the fall before to make an application for receivers in these cases. In fact, we had already done so before Judge Johnson, except in Chipps vs. Lindeberg. That suit had not been commenced the year before. I do not want to say positively either that Mr. Hume had made an application in Rodgers vs. Kjellman. He had an application before Judge Johnson in one or two cases, but, as I was not with him, I would not want to testify positively to that. In our cases, we had presented the matter for the appointment of a receiver to Judge Johnson the year before.

Q. You say the case of Chipps vs. Lindeberg was not pending when you arrived in Nome?

A. No, sir, that case was not pending, and had never been started until we arrived in Nome last year.

Q. The case of Rodgers vs. Kjellman: When was that commenced?

A. That was one of Mr. Hume's cases. I do not want to testify to that. I do not know what he did with that. He instituted the suit, and possibly made an aplication for a receiver before Judge Johnson. I do not say that positively, now. I was not with him at that time.

Q. You knew nothing of that case when you arrived at Nome?

A. Nothing more than that Mr. Hume was their attorney. That is as far as I can speak positively.

(Deposition of O. P. Hubbard.)

Q. You heard of it as a suit pending over a very rich placer claim?

A. I did not know anything about 2 Below. I did not know it had been opened or developed.

Q. Melsing vs. Tornanses: When was that commenced?

A. That was commenced the year before, before Judge Johnson.

Q. That is, in the summer or fall of 1899?

A. I think it was in the month of August that Judge Johnson was there. I would not want to swear to the date.

Q. 1899?

A. Yes, sir; it might have been as late as the first of September or as early as the latter part of July. I think August was the month.

Q. With respect to the case of Comptois vs. Anderson?

A. That was brought the year before, and the affidavit for receiver was presented to Judge Johnson.

Q. In August or September, 1899? A. Yes, sir.

Q. By Mr. Beeman?

A. By Hubbard and Beeman, who were then acting as a firm.

Q. Had you been at Nome before July, 1900?

A. Yes, sir, I went to that part of Alaska first in the spring of 1898.

Q. After these suits were brought, you came out of Nome, and were away from there during the winter of 1899 and the spring and summer of 1900?

(Deposition of O. P. Hubbard.)

A. Yes, sir.

Q. And then went back?

A. I came down each fall, and returned in the spring.

Q. You say that soon after you arrived in Nome, you took up this matter with respect to the appointment of a receiver, with Mr. Hume?

A. When I arrived there, my partners were then working on the papers in other cases, I think, and probably before I arrived they had been doing some work on it, as Mr. Hume had gone in a month ahead of me; probably a little over a month.

Q. Did you enter into negotiations of partnership prior to his going to Nome?

A. Our negotiations with reference to the partnership took place the fall before, with the understanding that the partnership should go into effect when we arrived in Nome this last season.

Q. Did Mr. Hume know that Judge Noyes and Mr. McKenzie were to arrive on or about July 19th?

A. No, sir, I do not think he knew anything about it at all. I had not communicated it to him in writing, and I do not see how he could have known it.

Q. Did you suggest to Judge Noyes that he appoint Mr McKenzie receiver in any one of these cases?

A. No, sir, I did not.

Q. Was it suggested to Judge Noyes, at your instigation or request, directly or indirectly through you, that Mr. McKenzie should be appointed receiver?

A. No, sir, it was not.

(Deposition of O. P. Hubbard.)

Q. Do you know who suggested it?

A. I do not.

Q. In any of these cases?

A. No, sir. I did not go before Judge Noyes in the matter at all, and I had no conversation with him at any time in reference to the matter, on or off the bench.

Q. Do you know where the order was signed appointing the receiver? A. I do not.

Q. Were you not present at the time?

A. I was not.

Q. Mr. Hume was attending to the whole matter?

A. Mr. Hume had the matter of the presentation of the cases to Judge Noyes, and where he presented them, or how he presented them, I do not know.

Q. Are you prepared to testify anything with respect to the orders appointing a receiver; that is, as they were first drawn and submitted to Judge Noyes, and any changes that were made in them at Judge Noyes request, and the form that was afterwards drawn that was presented to him for his approval, which he signed, respecting any changes between the orders as presented and the orders as signed?

A. I cannot testify anything about it. I do not know anything about any suggestion he made, or any changes.

Q. Had you talked with Alexander McKenzie prior to your arrival at Nome, respecting the appointment of any receiver in any of these cases, or over any of these claims?

(Deposition of O. P. Hubbard.)

A. I told Alexander McKenzie I was going to make an application for receiver in these cases.

Q. He knew that applications would be made to Judge Noyes for the appointment of receivers?

A. He knew what I had said to him.

Q. The matter had been talked over with him?

A. In that form, yes.

Q. Did he talk in your presence, or did he say anything to you with respect to any talks he had had with Judge Noyes about the matter?

A. Never at any time.

Q. There was no conversation between you and Judge Noyes respecting the appointment of a receiver?

A. Not a word, never.

Q. You were at Nome on the 14th of September, 1900?

A. Yes, sir.

Q. That is the day that the writs of supersedeas arrived there? A. Yes, sir, I was there at that time.

Q. Were copies of the writs served on you at that time?

A. It is my recollection that they were, yes; if that is the correct date.

Q. That is the correct date; that is, on or about that time; I think it was the 14th that they were served on you.

A. It is my recollection that I received copies of the writs at my office.

Q. Did you consult with Judge Noyes? Did you see Judge Noyes and talk with him about this matter, or any

(Deposition of O. P. Hubbard.)

other matter, shortly after the service on you of that writ? A. I did not.

Q. When was the first time that you saw Judge Noyes after that time?

A. I could not state, because I do not remember what the occasion was for my having seen him after that time, but my understanding is, at the time the writs came in, Judge Noyes was sick, and I know I did not see him in his room while he was sick, so I must have seen him after he got out, whenever that was.

Q. He was sick on the 14th, 15th and 16th, and the 17th was Monday. I believe he held court on the 17th of September.

A. I do not know whether he did or not; I could not say that he did or did not.

Q. And made orders staying proceedings in these cases?

A. An order was entered, I think, staying proceedings. Whether he went to the courthouse to do it, or whether he signed the order in his room and had the clerk enter it, I do not know.

Q. Don't you remember that on Monday, the 17th, the Court called the calendar, and you were present at the calling, at Brown's Hall?

A. On Monday, the 17th?

Q. Yes.

A. I was present at Brown's Hall, I remember, when he called the calendar once; but I would not say it was the 17th.

(Deposition of O. P. Hubbard.)

Q. The first general calendar that was called?

A. I do not hardly think I was present at the first general calendar. I think Mr. Beaman and Mr. Hume were there, but I do not think I was. I might be mistaken in that. I don't recall that I was present.

Q. Was not Mr. Hume sick in bed at that time?

A. No, sir, I think not.

Q. You remember that Mr. Hume was sick in bed?

A. Yes, sir, but it was later than that.

Q. For how long a period was he sick in bed, and not attending to his business?

A. He must have been down three weeks, anyhow.

Q. Was it not about that time?

A. I think he was out when the writs came in.

Q. I am speaking of events that transpired three days after that.

A. I think Mr. Hume was out. I do not think he was sick then.

Q. Do you remember that an affidavit was prepared, and Mr. Chipps signed and swore to it, upon which an injunction was asked for afterwards?

A. That must have been some time later than that which you speak of.

Q. I think the affidavit was signed on the 18th or 19th of September.

A. I would not want to testify to it, because I do not remember. The affidavit will show when it was filed.

Q. It was not filed, I think, until October 6th.

A. I would not testify to that from recollection. The affidavit will show just when.

(Deposition of O. P. Hubbard.)

Q. Do you remember the affidavit? Do you remember being in court and presenting the affidavit?

A. The matter was presented, yes, and I am inclined to think I was there.

Q. Did you not present it yourself?

A. I do not recall distinctly about that matter, whether I did or whether some one else did.

Q. Don't you remember that the affidavit was prepared by you, or in your office?

A. I think it was, yes. It might not have been, however, but I think it was. That is my recollection of it now.

Q. And signed and sworn to by Robert Chipps?

A. Yes, sir, he signed it and swore to it.

Q. Was he not your client at that time?

A. Yes, sir.

Q. And the affidavit recited that an alleged writ of supersedeas had issued out of this court, and had been served on you and upon the receiver?

A. I would not testify to the contents of the affidavit. It is on file, as I say, and will show exactly what it is. I would not want to testify to the contents, because I have not seen it since that time.

Q. Do you remember who drew the affidavit up?

A. I do not distinctly. I remember that an affidavit of that kind was drawn, but we were drawing papers and affidavits and statements continually. I would not say now.

Q. Are you prepared to say whether or not you drew it up.

(Deposition of O. P. Hubbard.)

A. No, sir, I am not prepared to say whether or not I did.

Q. Do you remember the affidavit recited that the defendants in the action under the writ had taken forcible possession of the placer claims?

A. As I say, I have not seen the affidavit since it was drawn and filed and I do not want to testify to the contents of it. It is on file, and possibly a copy of it is here now.

Q. Did Mr. Beeman have anything to do with any of these cases, or of the orders or motions, during the period between July 19th and October 15th, 1900?

A. Well, I cannot testify as to what Mr. Beeman did or did not do. He was a member of the firm there, of course.

Q. As far as your knowledge goes.

A. I don't think Mr. Beeman was present in court at the time when the applications were made. I do not think he was, but he might have been. I was not there, so I could not testify who was present.

Q. The applications in the first instance were for a receiver? A. Yes, sir.

Q. You stated a little while ago that Mr. Hume had attended to all of the matters. I would like to know if Mr. Hume did so exclusively.

A. I do not mean to say Mr. Hume did exclusively. I mean to say that Mr. Hume presented the matter to Judge Noyes in the first instance on the application for receivers in these cases. That is what I intended to

(Deposition of O. P. Hubbard.)

say. There were affidavits and statements to be procured, and in that matter Mr. Beeman and I assited, of course.

Q. Were you present on or about the same time, during the forepart of the month of October, 1900; when Mr. McKenzie withdrew some gold-dust from the vaults of the Alaska Banking and Safe Deposit Company?

A. No, sir, I was not. I remember to have been in the bank with Mr. McKenzie once during the season, but he was there at that time to procure some currency that he had in his separate box. It was not with reference to gold-dust at all.

Q. Do you remember that he did withdraw some gold-dust at one time? A. I did not know he did.

Q. You knew nothing about that?

A. I knew nothing more than an outsider, as to what was going on in the vaults, or the receivers' matters, except such matters as came up in court.

Q. Did your firm know anything about the withdrawal of this gold-dust, so far as you know?

A. My answer to that is that I do not know if they had any knowledge of it at all.

Q. Was Mr. Hume sick at that time?

A. Let me get the date of that.

Q. I think that was October 9th.

A. I should say that he was, yes, at that time.

Q. During his sickness, were you attending to the litigation?

(Deposition of O. P. Hubbard.)

A. I had charge of all matters in the office during his sickness.

Q. Was Mr. Beeman there at that time?

A. October 9th? I do not think he was.

Q. So that, during all that period, you would know everything that was done by your firm?

A. Yes, sir, I would be advised as to what was taking place at that time.

Q. Did you or your firm, as far as you know, ever prevent, directly or indirectly, Mr. McKenzie from complying with the orders or writs of supersedeas from this court which arrived in Nome on September 14th? To make it more definite, I will ask you this: Did you ever tell him that you would not consent to his obeying the orders of the Court in returning the gold-dust to the defendants?

A. No, sir, I never told him anything of that kind.

Q. Nothing of that kind at all?

A. No, sir, nothing of that kind.

Q. Did you ever tell anybody anything of that kind?

A. I do not think that question is proper under this examination, in regard to Judge Noyes; that it would not be anything against Judge Noyes if I had or had not. I think I will simply object to answer the question upon that ground. If the Court rules that I must answer, I will do so. Read the question, Mr. Reporter. (The reporter reads the previous question.) In answer to that part of the question which says, did I or any member of the firm

(Deposition of O. P. Hubbard.)

ever prevent Alexander McKenzie from complying with the writs, I answer that we did not.

Q. After the 14th of September, 1900, or on or about that time, shortly after that time, did you not notify Mr. McKenzie that he should not turn over the gold-dust that he held as receiver, or any part of it, and if he did, you would hold him responsible on his bond?

A. No, sir, not in that way.

Q. In what way did you?

A. I think that possibly at some time after the 14th, I do not know whether it was to Mr. McKenzie or to whom it was, but I think we said that if the gold-dust was released improperly, we should look to the bond.

Q. How was it to be released improperly?

A. That was a question of law, as to what construction was to be put on the writs, or the true construction.

Q. How did you give that notice to Mr. McKenzie?

A. I do not remember about it. I know it was not given in writing. I do not remember whether I had a conversation with Mr. McKenzie or with Judge Geary, who was his attorney. I do not recall how it was now.

Q. Do you know who was present at the time?

A. I do not remember that any one was present. I do not recall where it was. My recollection is that it was either stated to the receiver or to his attorney.

Q. By yourself?

A. That I am not positive of, but I am inclined to think it was.

Q. The effect of the communication to Mr. McKenzie

(Deposition of O. P. Hubbard.)

was that if he did turn over the gold, that you would hold him responsible upon his bond for the gold-dust?

A. No, sir, it was not that. It was, if he released the gold when he should not release it. I was not construing the writs for Mr. McKenzie. He had an attorney to do that.

Q. As you construed the writs, did they not require him to turn over the gold-dust?

A. I had no occasion to construe the writs. I had nothing to do with Mr. McKenzie as receiver.

Q. It was in respect to these writs that you so advised him? A. I did not advise him.

Q. Notified him.

A. You might say notified him. If the gold-dust was released when it should not be released, illegally, we should look to the bond in case we lost the gold-dust, of course.

Q. At that time you were referring to his action, or any contemplated action he might take, on account of the writs of supersedeas which had been served upon him?

A. These questions are all with reference to Alexander McKenzie and not with reference to Judge Noyes.

Q. I expect to connect them with Judge Noyes.

A. Read the question, Mr. Reporter (The reporter reads the previous question) I did not know anything about his contemplated action, or what he was going to do. He had his attorney, and I knew his attorney was advising him.

(Deposition of O. P. Hubbard.)

Q. You knew the writs had been served on him?

A. I took it for granted that they had. I did not know it. I assumed that to be the case.

Q. Were you not present on September 14th, in Mr. McKenzie's office, at the time Mr. Metson made a demand on Mr. McKenzie for him to comply with the writ of supersedeas in Chipps vs. Lindeberg, which had been theretofore served on him?

A. Yes, sir, I was present.

Q. And at the time Mr. Metson demanded that Mr. McKenzie comply with the writs of supersedeas?

A. Yes, sir; Mr. Metson made a written demand at that time for compliance with the writ.

Q. And requiring Mr. McKenzie to turn over the gold-dust?

A. Yes, sir; I heard the demand read, I think by Mr. Metson. I would not state now just what the contents were. That is the purport of it.

Q. The purport of it was to turn over the gold-dust?

A. Yes, sir; the purport of it was to turn over the gold-dust. I remember what Mr. McKenzie's answer was in that connection.

Q. It was after that that you notified Mr. McKenzie that you would hold him responsible if he turned over the gold-dust?

A. That is my recollection, that it was after that.

Q. Did you not have a conversation with Judge Noyes about that time? A. Pertaining to what?

Q. Pertaining to the writs of supersedeas?

(Deposition of O. P. Hubbard.)

A. No, sir, I think not.

Q. Did you not have a conversation in Judge Noyes' office on September 17th, relating to the writs?

A. I think not.

Q. Did you not have a conversation with him at that time in which the appealability of the order appointing a receiver was talked about?

A. I do not think at that time. The question of the appealability of the order had been discussed and talked over before these writs came in.

Q. Afterwards was it not talked about?

A. I do not see why it would have been. I do not recall any such conversation.

Q. Will you swear there was no such conversation?

A. If I had any conversation with Judge Noyes at that time, I do not recall it. I do not think I had.

Q. After the writs of supersedeas, and the order allowing the appeals, reached Nome, and it was found that Judge Morrow had held that the order was appealable, and allowed the appeal, was there not a conversation with Judge Noyes in respect to the action of Judge Morrow?

A. Do you mean, did I have a conversation?

Q. Yes. A. No, sir, I do not think so.

Q. Were you present at any such conversation?

A. Can you tell me who else was there, so as to give me some idea?

Q. Mr. Geary was present.

A. I will simply say this: I do not recall any definite

(Deposition of O. P. Hubbard.)

or particular conversation at any time; but I will say that frequently, about the court chambers, there, these matters were spoken of, just as attorneys talk about matters in open court, before the court convenes, frequently. I do not remember ever to have gone to Judge Noyes for the express purpose of talking with him about the appealability of the orders appointing receivers.

Q. You were present when Judge Noyes talked about the appealability of the order appointing a receiver, or with respect to the validity of the writs of supersedeas, or the power of Judge Morrow to allow the appeal from the order appointing a receiver, or the effect of any order or writ issued by the clerk, being in excess or beyond the order made by the judge or court?

A. I heard it talked of somewhere there about a difference in the language of the order and the language of the writ; but, as I say, I had no particular conversation with Judge Noyes about it.

Q. I am not talking about any particular conversation, but did you not have a conversation with Judge Noyes about the matter?

A. If I had a conversation, it would be a conversation.

Q. You say you never went there for the particular purpose of talking the matter over?

A. That is what I say. In the courtroom or chambers, I might have heard the matter spoken of. I know that all the attorneys were discussing the matter back and forth, sitting around. I had no conversation with Judge Noyes that I can now recall about the appeala-

(Deposition of O. P. Hubbard.)

bility of the order appointing the receiver, except I might have been present when that matter was discussed before him at the time the appeal was asked for.

Q. I am not talking about prior to September 14th at present.

A. I have told you several times, I do not recall any conversation with Judge Noyes upon that subject after the 14th.

Q. Do you recall that Judge Noyes expressed himself as being of the opinion, after September 14th, that Judge Morrow's orders were erroneous or void?

A. No, sir, I never heard Judge Noyes say that in my life.

Q. Or that the order of the clerk was void, the writ which the clerk had issued and sent up there was void, in so far as it directed any change in the possession of the property?

A. I do not recall that I heard any conversation of that kind by Judge Noyes.

Q. Did you ever hear him make any statement to that effect?

A. No, sir, I do not recall that I did. I do not see why I should have heard any conversation of that kind. I do not want to put in this record a lot of immaterial matter.

Q. Did not Judge Noyes tell you that he thought the action of Judge Morrow was unwarranted, or that his orders or writs were void?

A. No, sir, he did not.

(Deposition of O. P. Hubbard.)

Q. Did he express to you any opinion with respect to Judge Morrow's action down here, or with respect to the action of the Circuit Court of Appeals?

A. No, sir, he did not.

Q. At no time? A. At no time.

Q. Was there an understanding or agreement or stipulation to which you were a party, and in any one of these cases, that the receiver could take the gold-dust, or a portion of the gold-dust, from the safe deposit boxes, upon the consent of the attorneys for the defendants, and that if he got the consent of the attorneys for the defendants, then the Court would make an order directing him to take the gold-dust out?

A. I do not recall a stipulation of that kind having been presented to me.

Q. Was there an agreement that the gold-dust should remain in the boxes, and should be taken out when such a stipulation was obtained, that is, from the receiver on the one side, and the attorneys for the defendants on the other?

A. I know there were quite a good many stipulations. I cannot recall one to that effect. There were stipulations frequently presented to us to sign, not that we had anything to do with the matter, but we were attorneys for the plaintiff, and they would ask us to sign these stipulations, which were generally stipulations between the receiver and the defendants, Mr. Metson's and Mr. Knight's clients. It was for the purpose of getting possession of gold-dust for certain purposes. I not having anything to

(Deposition of O. P. Hubbard.)

do with the matter, paid very little attention to those stipulations. If the receiver's attorney signed them, I always signed them when they were presented, and paid very little attention to them.

Q. Why did you pay so little attention to them?

A. I did not think we were in a position to interfere. I did not want to interfere with what the receiver was doing, or what the defendants wanted, so long as it was a matter that the receiver and his attorneys were willing to consent to. We were never in possession of any gold-dust or any of these properties at any time.

Q. When did Mr. Beaman leave Nome?

A. I do not remember the date; the latter part of September; I should think after the middle of September.

Q. About September 19th?

A. I would not be positive about the date. I think it was after the middle of September.

Q. On what steamer was it?

A. I think it was the "Nome City," if there is a steamer of that name; I think it was the "Nome City" that he came out on.

Q. I will show you this affidavit of Robert Chipps, made in the case of Chipps vs. Lindeberg, and ask you if, having looked at it, you can recall who drew the affidavit, and who was present at the time?

A. I could not be positive who drew the affidavit. I see the notary who executed it is Mr. Freedman. He was not the notary in our office.

Q. Were you present when it was dictated?

(Deposition of O. P. Hubbard.)

A. I would not say that I was; I do not recall that I was.

Q. Do you recall that Mr. Dubose dictated this to a stenographer in your office, and at the time he dictated it Mr. McKenzie was present?

A. If anything of that kind took place, I do not recall it. I do not think he did.

Q. Did you draw this affidavit?

A. I do not remember that I drew it. I cannot recall now that I did.

Q. Mr. Hume was sick at that time?

A. I think he was.

Q. And was sick for some weeks afterwards?

A. What is the date of that again?

Q. The 29th of September.

A. Yes, sir, he was sick, I think, for some little time after that. Mr. Hume could not have had anything to do with that affidavit.

Q. Do you recollect that at this time, it was decided to apply to the Court there for an injunction?

A. Yes, sir, that was undoubtedly the case.

Q. To prevent the defendants in this case from taking the gold-dust out of the jurisdiction of that court?

A. Yes, sir, that was the purpose of the injunction.

Q. And those proceedings for the injunction were instituted by you, were they not?

A. I am not certain whether I presented them to the Court, or whether they were presented by some one else. I am not positive about that. I do not think I presented them.

(Deposition of O. P. Hubbard.)

Q. I will now show you a copy of a motion made to Judge Noyes, in the District Court of Alaska, in the case of Chipps vs. Lindeberg, by the firm of Hubbard, Beeman & Hume, as attorneys for the plaintiff, for a restraining order restraining the defendant in that case from working the placer claim, and restraining the defendants, their agents and employees from taking out of the jurisdiction of the court any gold taken from the Discovery claim, which was the subject of that action or suit, and ask you if that motion was made to the Court on October 6, 1900 —to Judge Noyes?

A. A motion to that effect was presented to Judge Noyes possibly on the 6th. I do not remember the date outside of what the record shows in the matter.

Q. And that was based upon the affidavit of Robert Chips? A. It so states.

Q. That is a fact, is it not?

A. The record states it. The motion itself states it.

Q. Was that made in Chambers or in court?

A. That I do not remember. As I say, I do not remember that I made the motion myself.

Q. If any member of your firm did make the motion, it must have been made by you.

A. It must have been made by me, if any member of our firm made it.

Q. Do you recollect whether it was made by Judge Dubose or Judge Geary?

A. I do not think Judge Geary could possible have made it, or had anything to do with it, but it is possible

(Deposition of O. P. Hubbard.)

that Judge Dubose did. I do not say he did. He was an attorney in the matter.

Q. Did he act for the receiver at any time?

A. That I do not know.

Q. Did he ever appear in court as attorney for the receiver?

A. Not as far as I know. As I was not in court when these proceedings were presented first, and as much of the argument took place after Judge Noyes came back from St. Michaels, I do not know much about what was done in court.

Q. Was not that motion first presented to Judge Noyes in Brown's Hall by Mr. Dubose, and in your presence, and subsequently that evening the argument was made by Mr. Dubose and Mr. Geary, and the argument was based upon the theory or principle that the Court below had no jurisdiction or power to grant the writs of supersedeas, and therefore they were void?

A. As to the first part of the question, about it having been presented in Brown's Hall first, I am inclined to think you are right about that. As to what Judge Dubose's argument was that night, I could not say now. I was sitting in the outer room. I know that Mr. Metson made quite a lengthy argument, and Judge Dubose talked a short time, and I think Judge Geary said something.

Q. In support of the motion?

A. I do not know whether it was in support of the motion. I would not undertake to say what his statement was.

(Deposition of O. P. Hubbard.)

Q. Do you think it was opposed to it?

A. I do not think anything about it, because I do not recall what Judge Geary said. I would naturally infer that his argument, if it was an argument at all, would have been in favor of the motion. As I do not recall what he said, I would not testify to it. I did not take part in the argument, nor did I read the authorities that they were relying on.

Q. Did you obtain from Judge Noyes, on the 6th of October, 1900, an order to show cause why a restraining order should not issue, in the words and figures following:

"United States District Court for the District of Alaska, Division No. 2.

ROBERT CHIPPS,
Plaintiff,
vs.
JAFET LINDEBERG et al.,
Defendants.

Upon the reading of the motion of the plaintiff for an injunction, and the affidavit thereto attached, and the complaint in the above-entitled cause, it is ordered that the defendants herein show cause before me, at my chambers, in the Court Building, Steadman Avenue, Nome, Alaska, on Monday, the 8th day of October, A. D. 1900, at the hour of —— 30 A. M. why an injunction should not issue restraining you from the further working of the

(Deposition of O. P. Hubbard.)

Discovery Placer Mining Claim, Cape Nome Mining District, District of Alaska, and restraining you from deporting from the jurisdiction of this Court any gold-dust or gold taken out of said Discovery Placer Mining Claim on Anvil Creek, Cape Nome Mining District, District of Alaska"— or an order substantially in the foregoing words and figures.

A. It is my recollection that an order to that effect was signed by Judge Noyes. I do not remember who obtained it.

Q. Do you remember whether you obtained it?

A. No, sir, I do not.

Q. You do not remember that you did not?

A. I do not remember that I did not, nor do I remember that I did. The record shows that Judge Noyes signed an order to that effect, and the record is much better than my memory.

(A recess was here taken until 2 o'clock P. M.)

Afternoon Session.

O. P. Hubbard, examination continued.

Mr. MADISON.—Q. Mr. Hubbard, we were speaking before recess about an application made by the plaintiffs in the case of Chipps vs. Lindeberg for a restraining order. I will ask you if on the 10th of October, 1900, Judge Noyes made an order and decision upon that motion in the words and figures following, to wit: "Upon reading the motion of plaintiff for an injunction, order, and the affidavit thereto attached to the complaint, and all papers filed in the above-entitled case, it is now ordered that you

(Deposition of O. P. Hubbard.)

Joseph Lindeberg, Erik O. Lindbloom and John Brynteson, and each and everyone of you, your agents, servants and employees, and attorneys, and every one working under the direction of you, your agents, servants and employees and attorneys, be and are hereby enjoined from moving, assisting in moving, causing to be moved, or allowing to be moved, any gold or gold-dust taken out of the said placer mining claim known as Discovery Claim, on Anvil Creek, Cape Nome Mining District, District of Alaska, U. S. A., to any place away from and outside of Nome precinct, District of Alaska, U. S. A., and from your possession."

(Signed) "ARTHUR H. NOYES, Judge of said District Court, District of Alaska, Second Division. Dated October 10, A. D. 1900, in Chambers."

A. I cannot say any more than the record shows.

Q. This is not a part of the record; it is a part of the affidavit.

A. The record will show exactly what was done. I could not add anything to the record.

Q. Is it your recollection that that order was made?

A. Yes, that a restraining order was made. I would not say that is the order, or that that is the date.

Q. Substantially to that effect, however?

A. I would not want to testify as to the contents of the order.

Q. The one which restrained the defendants from taking gold-dust out of Nome precinct.

A. The record must show for itself. I would not at-

(Deposition of O. P. Hubbard.)

tempt to state as to the records of the court without having them before me.

Q. That was what it was applied for, substantially, and the order was obtained?

A. The affidavit of motion, and all, were filed, and they show.

Q. After September 14, 1900, you were in communication with Mr. McKenzie, were you not?

A. I do not think I understand what you mean by "in communication."

Q. In friendly communication, and advising him, and talking with him?

A. No, sir, I was not Mr. McKenzie's attorney in these matters; I did not assume to advise him in regard to the receivership matter. I consider Mr. Geary his attorney.

Q. Did you not talk with him with respect to any action that Judge Noyes might take up there?

A. I do not think so. I do not see why I would.

Q. You do not recollect of any instance?

A. I was present at the time that you spoke of this morning, when Mr. Metson made his written demand.

Q. The first time the writ was served?

A. Yes. I heard what Mr. McKenzie said to Mr. Metson at the time. I knew in that way what his course was going to be; that is, he was going to have Mr. Geary give him a statement or an opinion as to what course he should pursue under the writs. That is the way I got my information. I did not see the decision that Judge Geary gave him, but I understood as hearsay, you might say, that he did give him an opinion, but what it was I do not

(Deposition of O. P. Hubbard.)

know; I did not see it. I had there a large number of cases outside of these receivership matters and my time was pretty well taken up in my own business without looking after Mr. McKenzie's affairs.

Q. You were very friendly with him, were you not?

A. Yes, we were friendly, certainly; but I was friendly with the attorneys on the other side, so far as I know, at all times, and with all their clients; I never knew anything to the contrary.

Q. You had acted as Mr. McKenzie's attorney?

A. Not in these matters you are inquiring about, at no time.

Q. But, prior to going to Nome, in other matters which were connected with this litigation up there, you acted as his attorney, did you not?

A. No, I do not regard the matters as being connected with the litigation at all.

Q. When you went there had Mr. Chipps made a deed of his interest in the property involved in the case of Chipps vs. Lindeberg to you as trustee for the company with which Mr. McKenzie was connected?

A. No, not prior to going there.

Q. Was there a deed in existence at that time to your knowledge? A. What kind of deed?

Q. Made by Chipps, having an interest in the properties.

A. Chipps conveyed a large number of properties, twelve or fourteen I think, to Mr. McKenzie, but not this contested property to my knowledge. One instrument made by Chipps to McKenzie in New York I did not see.

(Deposition of O. P. Hubbard.)

Q. Had he conveyed his interest to this contested property?

A. I do not know. McKenzie may have had a deed from him; I could not say whether he had or not. The deed which Chipps made to the contested claim was not delivered to McKenzie, but was returned to Chipps.

Q. Were there not certain deeds made to you as trustee?

A. Yes, a later date than you are fixing.

Q. When was that?

A. I could not recall the date; I should judge later than the date you are talking about.

Q. Was there no deed to you as trustee prior to September 14th?

A. I do not think so. I do not want to testify to anything that is in the record, because these dates I cannot recall. The record shows what it is.

Q. Was Mr. Chipps the owner of the claimant, so far as you know; had he possession of what he claimed—I do not mean possession, but did he have title to what he claimed to own when he brought the suit of Chipps vs. Lindeberg?

A. I ought not to testify to these facts; it is a matter between me and my client.

Q. I do not want you to give any professional secrets away.

A. You are asking me to go into my client's affairs. While I have no desire to conceal anything, the records will show exactly what was done. I could not add any-

thing to it or take anything from it. Those deeds are all of record.

Q. There are no deeds that are not of record as respect to matters of litigation?

A. If there are others I do not know of them.

Q. You are acquainted with Mr. Joseph K. Wood?

A. Yes, I am acquainted with Wood.

Q. Mr. Wood arrived at Nome on the same steamer that you did?

A. Yes, he was on the "Senator" going up. You have asked me twice with reference to our being on the steamboat going up. I think I can explain how these people were on the same boat with us. I was in Seattle some days before they arrived there. We were going to take the very first boat out that we considered reliable or safe. The officials came out from the East somewhere—they did not come out with us. Nor did we understand they were going to Nome upon our boat. I think, perhaps, they decided to do so on the day we left there. They were waiting for a Revenue Cutter; they had instructions, so the marshal told me, to wait for the Revenue Cutter. Their going on the boat with us, as I considered it, was the merest sort of an accidental occurrence. What eventually induced them to change their mind and not wait, I do not know.

Q. When was it, as you recollect, that Mr. Chipps transferred his interest in the property to Mr. McKenzie?

A. He made a transfer to Mr. McKenzie in New York City, I think, of these properties I speak about. I do not

(Deposition of O. P. Hubbard.)

believe that in that conveyance, however, that this disputed property was included at all. Mr. Chipps and Mr. McKenzie had a good deal of business together when I was not present; their first agreement in New York City, I think, was made without my being present.

Q. I am speaking about afterwards.

A. I am just making an explanation. I think Mr. Chipps at that time had possibly entered into some sort of an agreement—what the instrument was I do not know, if any—about this disputed property. But the conveyance that I refer to is one that Chipps made of a number of other properties which he had and which were not disputed claims at all; there was no contest over them. It is my recollection, too, that he did make in New York City, possibly, a separate conveyance of the disputed property.

Q. To Mr. McKenzie?

A. I would not say now; that is my recollection, that he made either a written agreement of some kind or a conveyance—I am not certain.

Q. Was that agreement made to you?

A. No, sir, it was not made to me.

Q. This deed that was made to you as trustee, was that the property not connected with the disputed property?

A. It was the disputed property.

Q. When was that made?

A. As I say I cannot give the date. It is recorded. We had so much going on around there I would not at-

(Deposition of O. P. Hubbard.)

tempt to fix the date; I might miss it a month, and it might be very material in these matters here. The deed is of record, and shows for itself.

Q. Was it before or after the arrival of the writs of supersedeas? A. I could not tell.

Q. About that time?

A. I could not say whether before or after. The season is very short up there, and all these matters occurred within a period of two or three months, you know, and I did not get it until late in July.

Q. The agreement to which you refer as having been made in New York, that was in the summer of 1900 prior to your going to Nome? A. Yes.

Q. And during the year 1900?

A. Yes. I want to say that by some agreement between Mr. Chipps and Mr. McKenzie, I think, before that, it was surrendered to Mr. Chipps. That is, I am pretty confident it was.

Q. The paper was surrendered to him?

A. Yes. They had some understanding with reference to the fact—I think Mr. McKenzie—I do not want to tell what Mr. McKenzie said, as that would be hearsay, as I was not present when they talked; it is not proper evidence.

Q. At that time you were acting as attorney for Mr. McKenzie?

A. I do not know as you could say I was acting for Mr. McKenzie; I was in a way; I was assisting him in the organization of his company and in procuring properties.

(Deposition of O. P. Hubbard.)

I procured all together by purchase and by contract one hundred claims, and many of the parties who owned these claims I was personally acquainted with. I assisted Mr. McKenzie in getting the properties together. All these properties were not disputed properties; they were uncontested properties in Alaska.

Q. You were also attorney for Mr. Chipps after reaching Nome? A. Yes.

Q. And at the time you speak of you talked with Mr. Chipps about his making his conveyance and agreement?

A. I was not his attorney with reference to the agreements he made in New York with Mr. McKenzie. He was doing his own negotiating there; I had nothing to do with that. I drew some deeds there that he signed. I was not acting as his attorney in that matter.

Q. Do you know Marshal C. L. Vawter?

A. Yes, very well.

Q. Do you know anything about his being ordered by Judge Noyes not to allow Mr. McKenzie or any one else to take the gold-dust out of the boxes of the safe deposit vaults on or about the 15th day of September, 1900?

A. I only know what I heard about that; I only know from the testimony that you have already taken in these matters. I saw the guard in the vaults, but how they happened to be there, and who put them there I do not know except by outside hearsay.

Q. Did you hear up there that an order to that effect had been made?

A. I understood so—if you want me to state matters

(Deposition of O. P. Hubbard.)

of that kind; it is not testimony. As I understood and nearly every one there understood that Judge Noyes had taken such steps, or had done something that prevented Mr. McKenzie or anybody else from having access or taking possession of the gold-dust. Now, I take it that Judge Noyes' order—I do not know that he made any order except the stay order, and that would be the best evidence of what he did.

Q. That order was never filed, is not of record?

A. Well, the order staying proceedings was filed, I understand.

Q. September 17th that was filed?

A. This matter as to any order that Judge Noyes made affecting the possession of the dust in the vaults—any information that I have is mere hearsay.

Q. Do you recollect how you came to hear of it up there?

A. I suppose every man in town heard of it.

Q. Did you hear of it as attorney for the plaintiff?

A. No. As I stated this morning we were not directly concerned; we did not have anything in our possession. The parties did not have, if they had possession of the properties, possession of the gold-dust. So far as the writs were concerned it was merely formal, and they were served, I suppose.

Q. So far as the taking possession of the gold-dust was concerned they did not consult you in respect to it?

A. Not at all; why should they?

Q. It was an immaterial matter with them?

(Deposition of O. P. Hubbard.)

A. He had no more possession that I had when the receiver was in there. Until his dismissal or discharge the matter was beyond us, of course.

Q. Were you not concerned as to what the receiver did with the dust?

A. Why, certainly I was concerned, as an attorney always is in his client's matters.

Q. If an order had been made allowing him to take out the gold-dust, or prohibiting him from doing so, would it not seem likely that you would learn of it as a party to the action?

A. Certainly, I would be very apt to learn of it.

Q. Did you not learn of it at that time?

A. As I say, I have some information that came to me, I do not know how, that Judge Noyes had taken some steps or had done something to secure the possession of the gold-dust in the vaults at that time. There was some excitement about the bank, and the marshal and the military were put there, but under what instructions I cannot state, except what I have got from the evidence already taken here.

Q. Did you ever have any talk with Judge Noyes about that matter?

A. No, I did not talk with Judge Noyes about these matters. Senator Geary was attorney for the receiver, and I felt that he did not need any reinforcement from me. That would have been an interference on my part if I had gone.

Q. Did Mr. McKenzie or his attorney ever come to you

(Deposition of O. P. Hubbard.)

at that time, say September 14th or afterwards, asking your permission to take out that gold-dust?

A. No, sir, not at all. As I stated this morning, whenever they drew up these stipulations between the receiver's attorneys and the attorneys for the defendants, they brought them to me to sign them. I did not pay much attention to the stipulations because I felt that anything that the receiver's attorney was willing to do, and anything that the defendants wanted in the way of a stipulation, that we were willing to enter into it—that is, to sign the stipulations. I could not tell what they were now.

Q. At any rate there was no objection on your part?

A. No objection to these stipulations, no. That is my recollection about it. I do not recall that I ever objected to any stipulations that the attorneys for the defendants and the receiver's attorney presented to me for signing.

Q. Do you recollect of ever saying that you would object to any stipulation, if presented?

A. No, I do not recall ever having done that. Mr. McKenzie, the receiver, had given a bond for the possession of the gold-dust, and we were reasonably secure under that bond about the dust. While we were rather desirous that it should remain in Alaska until the suits were tried, still if the receiver's attorney and the attorneys for the defendant wanted it sent out for safety, we would not object to that.

Q. Now, if after September 14th Mr. McKenzie had desired to comply with the writs of supersedeas and had

(Deposition of O. P. Hubbard.)

complied with the specific directions contained therein to deliver the property to the defendants, there would have been no objection on your part to his doing so.

A. No, I do not think so. I do not see what right I would have had to interfere in the matter at all. When he was appointed as receiver he gave his bond, and he had a right to act as receiver, and the plaintiffs would have no right to go to objecting unless he was doing some very unwarranted thing, or something of that kind.

Q. There was no objection on your part, or on the part of any members of your firm, to his complying with the writs, or the orders contained therein.

A. I am certain there was not any further than I have already stated to you. There was some conversation about the fact that if the gold-dust was released illegally that we might look to Mr. McKenzie's bond for protection.

Q. If the writ of supersedeas directing him to do that was void?

A. I am not saying that. I am not putting it upon that ground. If as receiver Mr. McKenzie had released this gold-dust when he should not have released it, or had turned it over, I think the plaintiffs would have a right to look to Mr. McKenzie for protection.

Q. At that time had not Mr. McKenzie succeeded to the rights of the plaintiffs, especially to plaintiff Chipps?

A. No, I do not regard it so. It is a legal construction of the matter. I do not regard it so. It would cer-

(Deposition of O. P. Hubbard.)

tainly be a legal construction of the instrument to determine that.

Q. At the time this argument was made on October 6th before Judge Noyes for the restraining order in the case of Chipps vs. Lindeberg by Judge Dubose and Judge Geary, was the argument to the Court made in your hearing?

A. Well, you might say yes and no. I was not in the same room; I was in an adjoining room. There were several in there and I do not know but what we were talking. You say the argument made by Judge Dubose and Judge Geary. The argument was made by Mr. Metson.

Q. That was against the issuance of this order?

A. Yes. Judge Dubose did no more than to cite some authorities to the Court which had already been before the Court in other matters and been used in other arguments on this same proposition theretofore. I do not think that Judge Geary made any argument. Judge Geary, I think, was in the same room where I was, and somebody asked him a question about some decision that he had cited to the Court in some former case, and I think he merely stepped out of the room and spoke about that decision, or explained it in some way, stated the purport of the decsion. He did not make any argument.

Q. Did it seem to be a foregone conclusion that the Judge would grant the order?

A. I do not think so. I had no idea what the Judge would do in the matter.

(Deposition of O. P. Hubbard.)

Q. Was the purport of the argument that you heard to this effect: that the order appointing the receiver was not an appealable order, and therefore the action of Judge Morrow was void, and even if not void that the only writ of supersedeas that could issue would be a writ which would have the effect of stopping the proceedings as they existed when the writ was issued, and would allow the receiver to remain in possession of the property he had in his possession when the writ was issued?

A I would not attempt to tell what the argument was, because I was not taking any part in it; I did not make any preparation to take any part in it. I would not undertake to state Mr. Metson's argument on his side, or what Judge Dubose said, nor to state what the question was they were arguing that evening.

Q. Were not those questions of motion the questions at issue between the parties up there after the writ of supersedeas had reached Nome?

A. I think Mr. Metson made the entire argument and cited a great many authorities against the granting of a restraining order, and I think he possibly put it upon the ground to some extent that the writ that had been issued had taken the matter out of the jurisdiction of that court there, and that the Court did not have power to issue the writ. As I did not participate in the matter directly I could not testify as to the points the attorneys attempted to make.

(Deposition of O. P. Hubbard.)

Q. Was Mr. Joseph K. Wood interested in this litigation?

A. Not so far as I know. I do not see how he could have been.

Q. Was he not acting as a go-between there, a conveyor of information between Mr. McKenzie and Judge Noyes, if you know?

A. Of course, I do not know anything about it, and I cannot see any reason why he should have been; Judge Noyes was just as accessible to one man as he was to another. I do not know anything about it.

Q. Mr. Wood was very intimate, was he not, with Judge Noyes? A. They were friendly.

Q. Did they not room together?

A. I do not know about that. I did not room at the hotel, and I do not know what their relations were up there. I know this, that the houses were very much crowded, and the chances were that some of them had to occupy the same room. That is, when they first arrived there; afterwards I think Mr. McKenzie got rooms in another locality. I am confident that nobody roomed with him there; at least I never saw anybody about his rooms there.

Q. Mr. Wood had a room adjoining Judge Noyes?

A. I do not know where their rooms were situated. I went once to Judge Noyes' room, but at that time he had a room in the front part of the hotel; who was near him I do not know. These men were all strangers to me. I did not know them until I had an introduction

(Deposition of O. P. Hubbard.)

before they went up there. I mean Judge Noyes and Mr. Wood.

Q. That does not include Mr. McKenzie?

A. No. I knew Mr. McKenzie in New York along in the spring of last year.

Q. Do you recall any time after September 14th when you were present when Judges Noyes expressed an opinion as to the action of the Court here, or any of its orders?

A. No, I do not recall hearing Judges Noyes express any opinion about the matter at any time. In regard to these orders, after the arguments were over generally he would take the matter under advisement and within a day or two would probably render a decision by refusing to sign the order or by signing it, and that would be the extent of the matter so far as I recall it now.

Q. When did Judge Dubose come into the case as one of the attorneys for the plaintiffs?

A. Well, I would not try to fix the exact date, but it was some time shortly after the receiver was appointed, but whether it was one week or two weeks I would not say.

Q. Was he employed by each of the plaintiffs?

A. No, he was not employed by the plaintiffs. We had him come to our office and we explained the cases to him, and told him we would be glad to have him assist us as counsel in the case. We understood that he was a mining lawyer from a mining State, and as our practice had not been in a mining community, we

(Deposition of O. P. Hubbard.)

thought it would be a good thing to have some attorney more experienced in mining matters.

Q. Any suggestion from Mr. McKenzie that he should be employed?

A. I do not recall any suggestion or anything of that kind.

Q. Did not Mr. McKenzie suggest that Mr. Dubose be employed as counsel in the cases or in one of the cases?

A. If he ever made a suggestion of that kind to me I cannot recall it now.

Q. You are not prepared to say he did not?

A. No, I would not be positive either way about that I can not recall any such suggestion on his part. My recollection is that we considered two or three different men there before we determined to speak to Judge Dubose.

Q. Did he not after that act in some matters and advise Mr. McKenzie as Mr. McKenzie's attorney?

A. Never to my knowledge.

Q. Was there not some suggestion made that he could not act for the plaintiff and receiver at the same time and thereupon Mr. Geary was engaged as counsel?

A. If he ever acted as attorney for Mr. McKenzie as receiver, it was a matter that I did not know anything about. His office was in another part of the street and near where Mr. McKenzie had his office. If Mr. McKenzie ever called him in for a consultation or anything of that kind about receivership matters, I do not know it.

(Deposition of O. P. Hubbard.)

Q. You know that he did afterwards up to September 14th advise Mr. McKenzie not to obey the writ of supersedeas, and that he has since been found guilty of contempt of the orders of this Court?

A. No, I did not know that he had ever advised Mr. McKenzie not to obey the writ of supersedeas. I have heard that he has been found guilty of contempt here. My information is that he was found guilty of contempt for advising one Dr. Comptois not to obey the writ. That is hearsay with me.

O. P. HUBBARD.

Subscribed and sworn to before me this 5th day of June, 1901.

E. H. HEACOCK,

United States Commissioner at San Francisco, for the Northern District of California.

Commissioner's Certificate to Depositions of Archie K. Wheeler and O. P. Hubbard.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

I certify that, in pursuance of the orders of the Court aforesaid, made and entered in the above-entitled matters on the 20th day of May, 1901, certified copies of which orders are hereunto annexed, on the 29th day of May, 1901, at 2 o'clock P. M., and the 3d day of June, 1901, at 2 o'clock, P. M., before me, E. H. Heacock, United States Commissioner at San Francisco, State of

California, duly authorized by said orders "to take the testimony of such persons as may be produced before him by respective counsel," Archie K. Wheeler and O. P. Hubbard appeared at my office, room 87, in the United States Appraisers' Building in the city and county aforesaid, and F. D. Madison, Esq., appeared as amicus curiae in support of the orders to show cause aforesaid, and Thomas J. Geary, Esq., appeared in his own behalf, and the said witnesses being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by their depositions hereunto annexed.

And I do further certify that said depositions were then and there taken down in shorthand writing by Clement Bennett, a competent stenographer and disinterested person, under my personal supervision, and was afterwards put into typewriting, and after they had been so put into typewriting, the said depositions were carefully read over by said witnesses, and sworn to and subscribed by them before me.

I further certify that I have retained the depositions in my possession until I now seal the same and return them to the clerk of the court aforesaid for which they were taken.

In testimony whereof, I have hereunto set my hand, at my office aforesaid, this 14th day of October, 1901.

E. H. HEACOCK,

United States Commissioner, at San Francisco, and Commissioner Designated by the Court Aforesaid for the Purpose of Taking Said Depositions.

At a stated term, to wit, the October term, A. D. 1901, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the city and county of San Francisco, on Monday, the seventh day of October, in the year of our Lord one thousand nine hundred and one. Present, The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. No. 703.

In the Matter of C. A. S. FROST. } No. 744.

Order Uniting Matters and Referring to Commissioner.

It is ordered that the above-entitled matters, and each of them, be, and the same are hereby, referred to Honorable E. A. Heacock, United States Commissioner, for the Northern District of California, who is hereby expressly authorized to take the testimony of such persons as may be produced before him by respective counsel in said matters.

For the purpose of facilitating the taking of such testimony, it is ordered that the said matters be united, and that the testimony of each witness shall be given at the same time in each and all of said proceedings, and thereafter used in either, so far as the same may be applicable thereto, and that but one return be made thereof, it appearing to the satisfaction of the Court that the ends of justice will be subserved by so proceeding.

The taking of said testimony shall commence on Tuesday, October 8th, 1901, at eleven o'clock, A. M., at the chambers of said Commissioner, or so soon thereafter as the respective parties are prepared to proceed therewith, and shall continue until such testimony shall be sealed and returned to this Court, such return to be made immediately upon the close of the taking of said testimony.

Mr. E. S. Pillsbury, an attorney and counselor of this Court, is authorized and requested to appear on its behalf and examine said witnesses.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the within entitled cause.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 7th day of October, A. D. 1901.

[Seal] F. D. MONCKTON,
Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

In the Matter of ARTHUR H. NOYES. } No. 701.

In the Matter of THOMAS J. GEARY. } No. 702.

In the Matter of JOSEPH K. WOOD. } No. 703.

In the Matter of C. A. S. FROST. } No. 744.

Testimony.

Thursday, October 17, 1901.

Before Hon. E. H. HEACOCK, United States Commissioner.

Appearances:

E. S. PILLSBURY, Esq., as Amicus Curiae in Support of the Order to Show Cause.

P. J. McLAUGHLIN, Esq., and FRANK J. HENEY, Esq., for Judge Arthur H. Noyes and C. A. S. Frost.

JAMES G. MAGUIRE, Esq., for Thomas J. Geary.

JOSEPH K. WOOD, Esq., in Propria Persona.

W. T. HUME, having been duly sworn, testified as follows:

Mr. PILLSBURY.—Q. Mr. Hume, what is your name, profession, and residence?

A. My name is Wilson T. Hume; profession, attorney at law; permanent residence, Portland Oregon. I have been residing in Nome, District of Alaska, since May, 1900, and during the summer of 1899.

Q. When did you go first to Nome?

A. I arrived in Nome first in the early part of July, 1899.

Q. You were there in 1900?

A. I was there during the summer of 1899, and arrived in Nome on the 14th day of June, 1900, and remained there until the 6th day of September, 1901.

Q. Were you engaged in the practice of law at Nome?

A. I was, yes, sir.

Q. Do you know the respondents here, Judge Noyes, Mr. Geary, Mr. Wood, and Mr. Frost? A. I do.

Q. State if you met them all at Nome,

A. I met them all at Nome.

Q. State when you first met Judge Noyes at Nome, if you remember.

A. The first time that I met Judge Noyes to speak to him was on the 23d day of July, 1900.

Q. Do you remember the day of the week?

A. It was on Monday.

Q. What was the nature of your business?

A. I called on Judge Noyes at the Golden Gate Hotel, presented to him an application for appointment of re-

(Testimony of W. T. Hume.)

ceiver or receivers in certain actions in ejectment that were to be commenced at that time concerning the right of possession to certain claims upon Anvil Creek, in Cape Nome Mining District. The cases involved Discovery Claim, No. 2 Below Discovery, No. 10 Above Discovery, and No. 1 on Nakkeli Gulch, a tributary of Anvil Creek.

Q. Do you remember the names of the plaintiffs?

A. On Discovery Claim, Robert Chipps was the plaintiff, vs. Jafet Lindeberg, John Brynpeson and Erick O. Lindblom; No. 2 Below Discovery was Henry Rodgers vs. William A. Kjellman; No. 3 Above Discovery—which I omitted before—I have forgotten the title to that; No. 10 Above Discovery was Melsing vs. Tornanses, and Nakkeli Gulch was Herbert Webster vs. Mickel Nakkeli.

Q. How many suits were there altogether?

A. There were five.

Q. State exactly what took place, if you please.

A. I arrived at the Golden Gate Hotel on the evening of Monday, the 23d day of July. Judge Noyes was sitting upon the front porch or stoop of the hotel. I introduced myself, and stated to the Judge that I had certain pleadings to be filed in some cases, and that I desired to make an application to him for the appointment of receivers. He invited me immediately to come upstairs to his room.

Q. Was this the first time you had met Judge Noyes in Nome?

A. The first time I had any conversation with him at

(Testimony of W. T. Hume.)

Nome. I had seen him before that. He had been pointed out to me as Judge Noyes, but I had not met him.

Q. Proceed.

A. We went up into his room—he opened the door to go into the room at the end of the hall, and excused himself from going in there on account of his wife, or some ladies, being in there, and he said, "We will go into Joe Wood's room." We stepped then to the door that opened on the side of the hall near to the entrance of his room, and he took a seat. I took a seat, and laid upon the bed the complaints and affidavits and motions for the appointment of receivers, and I think I had also the copies of the papers at that time, and stated to Judge Noyes that I had been unable to find the clerk of the court; he did not have any office, and I did not know him by sight, and I was unable to find him; so I had been unable up to that time to file the complaint and papers, and he said that Mr. Dickey, who was the deputy clerk, was up town somewhere, and would be back very shortly, and I could proceed. I then told him that the pleadings involved the possession of certain claims on Anvil Creek, and started to give the title of the causes. He asked me concerning the Chipps case, and I told him that was one of them on Discovery Claim, and proceeded to read the affidavit.

Q. Just state what he said. You say he asked you concerning it.

A. He asked me if I had the Chipps case. I told him yes, that was Discovery Claim. I picked up the papers

(Testimony of W. T. Hume.)

in the Chipps case, and started to read the affidavit of Robert Chipps, the plaintiff, and the application for a receiver. He stated it was unnecessary to read the affidavit, and asked me if I had the orders for the appointment of the receiver. I told him I had. He said, "Let me see your orders." I handed him the order in the Chipps case, and while he had that in his hand I examined the other paper, and procured the orders in the others; at the same time I stated to him I desired to recommend, for appoint ment as receiver, Alexander McKenzie. He stated he had known Mr. McKenzie a great many years, and that he thought he was a very good man, a capable man; being a stranger in the country, he would prefer to appoint some person that he was acquainted with, and that he thought Mr. McKenzie would be a very suitable man for appointment. He retired into his own room, procured a pen and ink, came back into the bedroom that was then occupied by Mr. Wood and Mr. Wheeler, and signed the orders. He told me I could leave the papers with him, and as soon as Mr. Dickey returned to the hotel they would be filed as of the date I had left them with him. He and I discussed the question as to the propriety of signing the orders prior to the beginning of the action, but he said they would be filed as of the time I presented them to him, to just leave them with him and he would take care of them. I took the orders and copies of the orders, copies of the pleadings, complaints and affidavits with me, and left the originals with Judge Noyes at that time.

(Testimony of W. T. Hume.)

Q. What examination did he make of the papers before signing these papers?

A. There was no particular examination that he made. The matter was very briefly gone through; that is, brief statement on my part. He asked me if the papers were all right, and I told him I believed they were, and there was no further examination. He signed the orders.

Q. Did he read the orders before signing them?

A. He glanced over the first order I handed to him. Whether he read it carefully, I could not say. The other orders were similar to the first order. I handed them to him. I could not tell the action of his mind, whether he read the typewriting. He did not read it aloud, and I did not read it aloud.

Q. About what time of day was this?

A. This was somewhere between half past five and six o'clock in the evening; in that neighborhood.

Q. Of the day you have mentioned?

A. Of Monday, the 23d day of July.

Q. 1900? A. 1900.

Q. How did you come to go to him upon that occasion? At whose instance, if anyone's?

Mr. McLAUGHLIN.—We object to that question as incompetent, irrelevant, immaterial, and in no way binding on Judge Noyes, and having no tendency to prove any of the allegations either of the affidavit, or any inferences or conclusions that might be drawn from it.

(Testimony of W. T. Hume.)

The COMMISSIONER.—Counsel understand that the Commissioner has no authority to rule on the objections. They will become part of the record, to be passed upon by the Court of Appeals later, and the witness will answer the question the same as though no objection was made.

Mr. McLAUGHLIN.—I understand; but as to the certification of questions, I did not know what the practice would be; whether the question objected to and supposed to be important might not be certified to at once.

The COMMISSIONER.—That would keep us probably certifying all the time. The practice is to place the objection of record, and the witness answer the question. At some future time it may be certified to the Court, but not during the examination.

Mr. McLAUGHLIN.—Such questions as may be deemed necessary, you may certify?

The COMMISSIONER—Not pending the examination of the witness.

Mr. McLAUGHLIN.—But after it is closed?

The COMMISSIONER.—Yes. It would be taking up all our time to go to the Court.

Mr. McLAUGHLIN.—The question is not certified during the examination unless the witness refuses to answer, and persists in his refusal?

The COMMISSIONER.—Then the rule provides for the certification. Even that may be deferred to some subsequent time.

(Testimony of W. T. Hume.)

Mr. PILLSBURY.—Q. Now, answer the question, Mr. Hume. Read the question, Mr. Reporter.

(The reporter reads the previous question as follows: "How did you come to go to him upon that occasion? At whose instance, if anyone's"?)

A. At the instance of Alexander McKenzie.

Q. State, if you please, what occurred, with reference to your going there, between yourself and Alexander McKenzie.

Mr. McLAUGHLIN.—We note the same objection to that question. We have no desire to incumber this record by objections to the same class of testimony, if we can avoid it in any way.

Mr. PILLSBURY.—It may be understood of record that all objections of a kindred character are reserved. As far as I am concerned, I have no objection, that on the hearing before the Court you may move to strike out any portion of the testimony, so as to facilitate the proceedings.

Mr. MAGUIRE.—That applies to all the respondents.

Mr. PILLSBURY.—To all the respondents. I do not desire the Court to consider any testimony that it may deem incompetent.

Mr. HENEY.—And object to any questions as well?

Mr. PILLSBURY.—Certainly. You can move to strike out any portion of the testimony.

(Testimony of W. T. Hume.)

Mr. MAGUIRE.—That would not go to the form. It would not stipulate that they might object to the form of the question?

Mr. PILLSBURY.—No.

Mr. McLAUGHLIN.—We understand that it does not go to the form of the question. It is the substance.

Mr. PILLSBURY.—It goes to the relevancy and admissibility of the testimony.

Mr. HENEY.—We may object to any question other than to the form.

Mr. PILLSBURY.—You can put it as broad as you please. When this matter is heard before the Court, you are at liberty to challenge any portion of the testimony as irrelevant and inadmissible for any purpose.

Mr. McLAUGHLIN.—Even although the question eliciting the testimony was not objected to.

Mr. PILLSBURY.—Yes, sir. I do not desire the Court to consider any testimony which under any circumstances they would not consider relevant or competent or admissible.

Q. Proceed, Mr. Hume. I will ask you preliminarily: Had you seen Mr. McKenzie at Nome prior to this occasion when these orders were signed?

A. I had seen Mr. McKenzie first at Nome, I think four days prior to the time of the signing of these orders, almost continually during that time up to the time of the signing of the orders.